

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TENNESSEE
3 GREENEVILLE

4 UNITED STATES OF AMERICA, . DOCKET NO. CR-2-14-46

5 GOVERNMENT, .

6 VS. .

GREENEVILLE, TN

7 OCTOBER 27, 2015

8 MAXWELL SUERO, .

2:00 P.M.

9 DEFENDANT. .

10

11
12 TRANSCRIPT OF SENTENCING PROCEEDINGS
13 BEFORE THE HONORABLE J. RONNIE GREER
14 UNITED STATES DISTRICT JUDGE

15 APPEARANCES:

16 FOR THE GOVERNMENT:

U.S. DEPARTMENT OF JUSTICE
OFFICE OF U.S. ATTORNEY
J. GREGORY BOWMAN, AUSA
220 WEST DEPOT STREET, SUITE 423
GREENEVILLE, TN 37743

19 FOR THE DEFENDANT:

WAYNE R. STAMBAUGH,
ATTORNEY AT LAW
P.O. BOX 1896
MORRISTOWN, TN 37816

23 COURT REPORTER:

24 KAREN J. BRADLEY
RPR-RMR
U.S. COURTHOUSE
220 WEST DEPOT STREET
25 GREENEVILLE, TN 37743

1 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT
2 PRODUCED BY COMPUTER.

3 (CALL TO ORDER OF THE COURT AT 2:00 P.M.)

4 THE COURT: ALL RIGHT. MS. HOPSON, WILL YOU
5 CALL THE NEXT CASE, PLEASE.

6 THE CLERK: USA VERSUS MAXWELL SUERO, CASE
7 NUMBER CR-2-14-46.

8 THE COURT: ALL RIGHT. THE DEFENDANT IS BEFORE
9 THE COURT THIS AFTERNOON FOR SENTENCING IN THIS CASE. HE
10 HAS BEEN CONVICTED ON A CHARGE OF CONSPIRACY TO DISTRIBUTE
11 28 GRAMS OR MORE OF COCAINE BASE. A PRESENTENCE REPORT
12 WAS ORDERED AND PREPARED. THE REPORT WAS DISCLOSED TO THE
13 DEFENDANT ON AUGUST 7, 2015. IN THE PRESENTENCE REPORT
14 THE PROBATION OFFICER, I GUESS -- ACTUALLY IN THE
15 PRESENTENCE REPORT AND THE ADDENDUM THE PROBATION OFFICER
16 CALCULATES AN ADVISORY GUIDELINE RANGE OF 70 TO 87 MONTHS
17 BASED ON A TOTAL OFFENSE LEVEL OF 25 AND A CRIMINAL
18 HISTORY CATEGORY OF 2. BY STATUTE MR. SUERO FACES A
19 MANDATORY MINIMUM TERM OF 5 YEARS UP TO A MAXIMUM TERM OF
20 40. THERE IS STILL ONE PENDING OBJECTION TO THE
21 PRESENTENCE REPORT.

22 MR. STAMBAUGH, HAVE YOU RECEIVED AND READ A
23 COPY OF THIS PRESENTENCE REPORT?

24 MR. STAMBAUGH: I HAVE, YOUR HONOR.

25 THE COURT: AND HAVE YOU REVIEWED IT AND

1 DISCUSSED IT WITH MR. SUERO?

2 MR. STAMBAUGH: I HAVE, YOUR HONOR, AND WE ALSO
3 WENT OVER THE ADDENDUMS AS WELL --

4 THE COURT: ALL RIGHT.

5 MR. STAMBAUGH: -- AND WHAT WE WOULD BE DOING
6 THIS AFTERNOON.

7 THE COURT: ALL RIGHT. THANK YOU.

8 MR. SUERO, HAVE YOU RECEIVED AND READ A COPY OF
9 THE PRESENTENCE REPORT PREPARED IN THIS CASE?

10 THE DEFENDANT: YES.

11 THE COURT: AND HAVE YOU REVIEWED THAT REPORT
12 AND DISCUSSED IT FULLY WITH YOUR ATTORNEY?

13 THE DEFENDANT: YES.

14 THE COURT: HAVE YOU HAD SUFFICIENT TIME TO
15 REVIEW THE PRESENTENCE REPORT WITH YOUR ATTORNEY?

16 THE DEFENDANT: YES.

17 THE COURT: ALL RIGHT. MR. STAMBAUGH, WHERE DO
18 WE STAND ON THIS REMAINING OBJECTION, THAT IS THE
19 OBJECTION TO THE CRIMINAL HISTORY POINTS ASSESSED IN
20 PARAGRAPH 37?

21 MR. STAMBAUGH: YES, YOUR HONOR; AND, AGAIN, WE
22 RECEIVED THIS ADDENDUM LATE LAST WEEK, AND I'VE ALREADY
23 DISCUSSED IT WITH MY CLIENT AT THAT POINT THAT I LET HIM
24 KNOW WHAT I BELIEVE THE PROBATION OFFICE WOULD COME BACK
25 WITH REGARDING THIS PARTICULAR ISSUE OF HIS STATUS OF

1 YOUTHFUL OFFENDER. I'VE GONE OVER THAT, AND I'VE ALSO
2 LOOKED AT THE -- AND THEY PROVIDED A COPY OF THE CASE OF
3 UNITED STATES VERSUS, I BELIEVE IT'S LASANE.

4 THE COURT: AND I MISSPOKE, IT'S PARAGRAPH 34;
5 ISN'T IT?

6 MR. BOWMAN: YES, YOUR HONOR.

7 MR. STAMBAUGH: THAT'S CORRECT, YOUR HONOR.

8 AND THAT GOES INTO THIS CONVICTION WHICH
9 HAPPENED IN, I GUESS WE'LL CALL IT SUPERIOR COURT OF
10 BRONX, NEW YORK. THEY PROVIDED, AGAIN, AND IT WAS A
11 SECOND DOCUMENT. IT'S NOT A JUDGMENT. WE DON'T HAVE A
12 JUDGMENT IN THIS CASE. WE DON'T HAVE A JUDGMENT, ALL WE
13 HAVE IS THE NCIC; AND THEN WE HAVE A COMPUTER-GENERATED
14 DOCUMENT THAT WAS SENT TO ME THAT STATES -- I DON'T KNOW,
15 I HOPE THIS WAS SENT TO THE GOVERNMENT AS WELL. ON PAGE 8
16 OF 14, IT SAYS, CYCLE ONE, VIOLENT FELONY OFFENSE, YOUTH-
17 FUL OFFENDER, AND THEN UNDERNEATH THAT JUVENILE OFFENDER;
18 AND I DON'T KNOW IF THE COURT HAS THAT DOCUMENT OR NOT.

19 THE COURT: I DO NOT, AT LEAST I DON'T HAVE IT
20 HERE. I DON'T RECALL SEEING IT.

21 MR. STAMBAUGH: THIS IS JUST SOMETHING THAT WAS
22 PROVIDED FROM THE PROBATION OFFICE. AND IT ALSO GOES ON
23 ON PAGE 11 OF 14, BASICALLY SAYS THAT IT IS SEALED. THIS
24 IS SOMETHING THEY RECEIVED FROM NEW YORK. I KNOW THAT
25 THEY WERE UNSUCCESSFUL OF GETTING ANY TYPE OF CERTIFIED

1 JUDGMENT, AS I WAS UNSUCCESSFUL ON GETTING ANY TYPE OF
2 JUDGMENT FROM NEW YORK.

3 I'M GOING TO SOMEWHAT SPEAK DIRECTLY TO THIS
4 LASANE CASE AND THEN EXPLAIN WHY I BELIEVE IT IS DIFFERENT
5 THAN WHAT WE HAVE HERE. ONE, AGAIN, WE DON'T HAVE A COPY
6 OF THE JUDGMENT. WE DON'T HAVE A CERTIFIED COPY, MUCH
7 LESS A COPY OF ANY KIND SHOWING EXACTLY WHAT HAPPENED.
8 LASANE, IT WAS A DIFFERENT TYPE OF SITUATION, IN THAT THEY
9 DID HAVE PROOF OF SOME SORT THAT HE WAS ADJUDICATED AS A
10 YOUTHFUL OFFENDER; AND THEN FROM WHAT I UNDERSTAND, HE WAS
11 ACTUALLY SENT TO AN ADULT CORRECTIONAL FACILITY, AND
12 THAT'S SOMETHING THAT THE COURT LOOKED AT IN MAKING THAT
13 DETERMINATION.

14 WE DON'T HAVE ANY PROOF OF THAT HERE. WE DON'T
15 HAVE ANY PROOF OF WHERE HE ACTUALLY SERVED HIS TIME OR THE
16 FACT OF THE MATTER IS WHETHER HE WAS TRULY A JUVENILE OR
17 NOT. THE FACT OF THE MATTER THAT THE RECORD WAS ACTUALLY,
18 CONTINUES TO BE SEALED, I THINK, IS COMPELLING.

19 THIS WAS A PLEA OF GUILTY, THIS WAS NOT A
20 TRIAL, AND HE DID PLEAD GUILTY; AND I JUST THINK WE'RE
21 STILL IN THE SAME SITUATION OF NOT REALLY HAVING THE
22 INFORMATION IN FRONT OF US BECAUSE THE COURT IN NEW YORK
23 WILL NOT PROVIDE US THE INFORMATION; AND, AGAIN, THAT WAS
24 JUST PROVIDED TO ME BY THE PROBATION OFFICE.

25 I DO SEE IN THE ONE DOCUMENT IT SAYS UNDERNEATH

1 YOUTHFUL OFFENDER, IT SAYS JUVENILE OFFENDER. I DON'T
2 KNOW WHAT TO MAKE OF THAT.

3 ALL I KNOW IS WE DON'T HAVE A COPY OF A JUDG-
4 MENT WHICH STATES WHETHER HE PLED GUILTY AS A MINOR OR HE
5 PLED GUILTY AS AN ADULT. WE DON'T HAVE ANY PROOF ALSO OF
6 HOW HE DID HIS TIME. I THINK THOSE ARE FACTORS THE COURT
7 NEEDS TO LOOK TOWARDS IN MAKING ITS DETERMINATION; AND
8 IT'S A DIFFICULT ONE BECAUSE IT'S MY UNDERSTANDING THAT --
9 OF COURSE, IT'S -- WHEN THIS REQUEST WAS MADE TO NEW YORK,
10 IT WAS DONE, BY MY UNDERSTANDING, OF A COURT ORDER TO
11 PROVIDE THESE DOCUMENTS, OR THEY UNDERSTOOD THESE WERE
12 BEING PROVIDED TO THIS FEDERAL COURT'S JURISDICTION; AND
13 HE STILL REFUSED TO DO THAT, WHICH PUTS MY CLIENT IN QUITE
14 AN AWKWARD POSITION BECAUSE THERE'S NO WAY FOR HIM TO --
15 OTHER THAN HIS OWN TESTIMONY, AND HE CAN TESTIFY IN A FEW
16 MOMENTS ABOUT HOW HE WAS CONVICTED, HOW HE PLED GUILTY,
17 WHERE HE SERVED HIS TIME; BUT OTHER THAN THAT WE JUST
18 DON'T HAVE ANY PROOF OF WHETHER HE WAS A YOUTHFUL OFFENDER
19 OR WHETHER HE WAS TRULY A JUVENILE OFFENDER. I'M NOT
20 GOING TO ARGUE WITH THE CASE --

21 THE COURT: DOESN'T THE BRONX COUNTY SUPREME
22 COURT HAVE JUVENILE JURISDICTION? I UNDERSTOOD THAT WAS
23 THE TRIAL COURT OF RECORD.

24 MR. STAMBAUGH: I BELIEVE THAT'S WHAT IS STATED
25 IN THE CASE, IT GOES INTO THAT, BECAUSE IT DEALS WITH A

1 CASE DIRECTLY FROM THAT COURT; BUT IF IT WAS A COURT OF
2 RECORD, I'M NOT SURE, AGAIN, HOW IT COULD BE A SEALED
3 CASE. IF HE WAS TRIED AS AN ADULT, THEN IT WOULD BE
4 CONSIDERED AN ADULT FILE, AND WE SHOULD BE ABLE TO HAVE A
5 COPY OF THE JUDGMENT HERE, WHICH WE DON'T HAVE.

6 THE COURT: WHAT WE HAVE IS AN NCIC REPORT THAT
7 INDICATES THAT HE WAS CONVICTED OF THOSE OFFENSES IN THE
8 BRONX COUNTY SUPREME COURT; CORRECT?

9 MR. STAMBAUGH: THAT'S CORRECT, YOUR HONOR,
10 THAT'S WHAT WE HAVE.

11 THE COURT: I DON'T KNOW OF ANYTHING THAT
12 REQUIRES THE GOVERNMENT TO PRODUCE THE JUDGMENT; DO YOU?

13 MR. STAMBAUGH: WELL, GIVEN THE BURDEN OF PROOF
14 IN THESE SENTENCING HEARINGS, YOUR HONOR, I'M NOT SURE
15 THAT THEY'RE REQUIRED TO DO SO. IT'S AN UNUSUAL SET OF
16 CIRCUMSTANCES BECAUSE IF WE WERE IN ANOTHER COURT, ANY
17 TYPE OF JUDGMENT, YOU'D HAVE TO HAVE A CERTIFIED COPY OF
18 THE JUDGMENT TO PROVE THAT IT ACTUALLY EXISTS, THAT IT'S
19 NOT JUST SOME SORT OF HEARSAY DOCUMENT THAT'S BEEN
20 PRODUCED, AND THAT'S WHAT --

21 THE COURT: LET ME ASK YOU THIS, YOU SAID
22 MR. SUERO WAS WILLING TO TESTIFY WHAT HAPPENED, IS HE
23 WILLING TO TESTIFY UNDER OATH THAT HE WAS NOT CONVICTED OF
24 THESE OFFENSES IN THE BRONX COUNTY SUPREME COURT?

25 THE DEFENDANT: YES.

1 THE COURT: AT THE RISK OF BEING CHARGED WITH
2 PERJURY?

3 THE COURT: YES.

4 MR. STAMBAUGH: AND I'VE EXPLAINED TO HIM WHAT
5 COURT -- IT STATES WHAT COURT WE'RE IN. THERE'S NO DOUBT
6 IT SHOWS IN THE DOCUMENTS THAT IT WAS IN THAT COURT. WHAT
7 HE'S TELLING ME IS, HE'S SAYING HE DID NOT DO THIS AS A
8 YOUTHFUL OFFENDER, THAT HE WAS A JUVENILE.

9 I GUESS ONE OF THE COMPELLING QUESTIONS WOULD
10 BE IN THIS CASE IS WHERE DID HE DO HIS TIME.

11 THE COURT: WHY DOES THAT MAKE A DIFFERENCE?

12 MR. STAMBAUGH: BECAUSE IT SEEMS TO BE A FACTOR
13 THAT THE COURT LOOKED AT IN THE UNITED STATES VERSUS
14 LASANE OPINION.

15 THE COURT: WELL, I THINK WHAT THEY LOOKED AT
16 WAS THAT IT, IN ADDITION TO ALL THE OTHER THINGS THEY
17 CITED, HE SERVED HIS SENTENCE IN AN ADULT PRISON.

18 MR. STAMBAUGH: YOUR HONOR, IF I MAY HAVE ONE
19 MOMENT TO SPEAK TO MY CLIENT.

20 THE COURT: PLEASE MAKE SURE THAT HE
21 UNDERSTANDS THAT --

22 MR. STAMBAUGH: ABSOLUTELY, YOUR HONOR.

23 THE COURT: NOT ONLY IS HE AT RISK FOR BEING
24 CHARGED WITH PERJURY, HE'S AT RISK OF BEING -- RECEIVING
25 AN ENHANCEMENT FOR OBSTRUCTION IN THIS CASE IF HE

1 TESTIFIES FALSELY.

2 (OFF-THE-RECORD DISCUSSION BETWEEN THE DEFENDANT AND
3 HIS ATTORNEY)

4 MR. STAMBAUGH: WHAT MY CLIENT HAS TOLD ME,
5 YOUR HONOR, AND TO MAKE SURE WE'RE ABSOLUTELY CLEAR ABOUT
6 THIS, HE UNDERSTANDS THE SIGNIFICANCE OF THIS BECAUSE I'VE
7 EXPLAINED THIS TO HIM BEFORE, HE'S SAYING NOW THAT HE WAS,
8 PLED GUILTY AS A YOUTHFUL OFFENDER, BUT HE DID HIS TIME IN
9 A JUVENILE DETENTION CENTER.

10 THE COURT: ALL RIGHT.

11 MR. STAMBAUGH: AND I DO UNDERSTAND WHAT THAT
12 MEANS. OF COURSE, I'VE DONE THE RESEARCH AS WELL IN THE
13 CASE MATTER. IF IT IS THE FACT THAT HE DID PLEAD GUILTY
14 AS A YOUTHFUL OFFENDER, THAT MIGHT MAKE THIS A MOOT POINT.

15 THE COURT: ALL RIGHT. I DON'T THINK THAT MUCH
16 IS AT ISSUE HERE. I DON'T KNOW THAT THE GOVERNMENT WILL
17 TAKE ISSUE WITH THE STATEMENT THAT HE SERVED IT IN A
18 JUVENILE FACILITY. I GUESS THE QUESTION IS WHETHER THAT
19 IN FACT DISTINGUISHES THIS CASE FROM THE SECOND CIRCUIT'S
20 LASANE CASE.

21 OKAY. GO AHEAD, MR. STAMBAUGH. I'M SORRY.

22 MR. STAMBAUGH: AND, AGAIN, YOUR HONOR, I MEAN,
23 IT'S WHAT -- HE'S MADE THE STATEMENT TO ME EARLIER, THAT
24 AGAIN, THAT -- AND, AGAIN, WE DO HAVE A YOUTHFUL OFFENDER
25 DESIGNATION IN THAT PARTICULAR COURT. AGAIN, WHAT

1 TROUBLES ME IS THE FACT OF THE MATTER IS THAT THIS COURT
2 RECORD IS STILL SEALED, AND THE FACT THAT IT'S SEALED JUST
3 MAKES ME BELIEVE THAT HE WAS A JUVENILE AT THE TIME.

4 IT'S VERY DIFFICULT FOR US, ESPECIALLY SOMEONE
5 IN MY POSITION, I'M NOT LICENSED IN THE STATE OF NEW YORK,
6 I CAN ONLY READ AND REVIEW AND TRY TO UNDERSTAND THE LAWS
7 THERE, AND THIS WOULD BE SEEING SOMETHING I THINK YOU NEED
8 TO BE IN PRACTICE THERE TO UNDERSTAND EXACTLY HOW THESE
9 COURTS WORK BECAUSE IT IS VERY CONFUSING TO WORK VERSUS
10 HERE IN TENNESSEE. I JUST KNOW FROM MY OWN PRACTICAL
11 EXPERIENCE THAT IF I HAVE A SEALED FILE, THAT MEANS IT'S A
12 JUVENILE COURT FILE AND WE CANNOT ACCESS IT. THAT MEANS
13 THE PERSON WAS A JUVENILE.

14 THE COURT: ALL RIGHT.

15 PROBATION OFFICER JOSEPH: YOUR HONOR, I JUST
16 WANT TO MAKE SURE THAT, I GUESS, THE GOVERNMENT AND YOUR
17 HONOR HAS A COPY OF SOMETHING THAT MR. STAMBAUGH MIGHT
18 HAVE WITH HIS ADDENDUM.

19 THE COURT: HE JUST HANDED ME HIS COPY.

20 PROBATION OFFICER JOSEPH: OKAY.

21 THE COURT: I HAVE MR. STAMBAUGH'S COPY.

22 PROBATION OFFICER JOSEPH: I APOLOGIZE. I
23 DON'T KNOW WHY THAT DIDN'T GET DISTRIBUTED TO EVERYONE.

24 THE COURT: WELL, I UNDERSTOOD --

25 MR. BOWMAN: I'VE NOT SEEN IT. I DON'T KNOW

1 THAT I DIDN'T -- IT'S POSSIBLE I OVERLOOKED IT IN THE
2 E-MAIL, BUT ALL I'VE SEEN IS THE ADDENDUM ALONG WITH THE
3 LASANE CASE, YOUR HONOR. I'M NOT SAYING THAT IT'S THE
4 FAULT OF --

5 MR. STAMBAUGH: IT IS -- TO ME, IT JUST ADDS TO
6 THE CONFUSION.

7 MR. BOWMAN: THANK YOU.

8 WHAT THIS APPEARS TO ME TO BE, YOUR HONOR, IS
9 SIMPLY A PORTAL REPORT, WHICH, YOU KNOW, LAW ENFORCEMENT
10 ENTITIES CAN RUN AND SIMILAR TO AN NCIC REPORT. I DON'T
11 THINK THAT THE ACTUAL TITLES, YOU KNOW, UNDER CYCLE ONE
12 WOULD HAVE ANY BEARING ON THE ADJUDICATION BECAUSE THE
13 ONES THAT I'VE READ IN THE PAST, THEY, THEY TYPICALLY LIST
14 ADJUDICATIONS UNDER SEPARATE CATEGORIES, SUCH AS AUTO
15 OFFENSES, YOU KNOW, FELONY CONVICTIONS, MISDEMEANOR
16 CONVICTIONS. I WOULD -- IT WOULD BE MY CONJECTURE,
17 OBVIOUSLY, YOU KNOW, I'M NOT -- I CAN'T SAY FOR CERTAIN,
18 BUT WHAT THEY'RE SIMPLY DOING IS LISTING VARIOUS TYPES OF
19 OFFENSES THAT WOULD FALL UNDER EITHER OF THOSE CATEGORIES.

20 THE COURT: LET'S ADDRESS THE QUESTION FIRST
21 THAT MR. STAMBAUGH RAISES ABOUT WHETHER OR NOT THIS
22 DOCUMENT IS SUFFICIENT TO PROVE THAT THE CONVICTION
23 ACTUALLY OCCURRED, BUT IT NOW SOUNDS LIKE MR. SUERO ADMITS
24 THAT HE WAS IN FACT CONVICTED UPON HIS GUILTY PLEA AND
25 RECEIVED A YOUTHFUL OFFENDER ADJUDICATION AND THEN SERVED

1 HIS TIME IN A JUVENILE FACILITY; AND MR. SUERO IS SHAKING
2 HIS HEAD YES.

3 THE DEFENDANT: YES, SIR.

4 THE COURT: SO I GUESS AT THIS POINT THE ISSUE
5 OF WHETHER THE CONVICTION OCCURRED OR NOT IS SOMEWHAT MOOT
6 IN LIGHT OF THAT ADMISSION.

7 MR. STAMBAUGH: THAT'S CORRECT, YOUR HONOR.

8 THE COURT: SO IT IS SUFFICIENT TO ESTABLISH
9 THE CONVICTION ITSELF, THAT LEAVES THE COURT THEN WITH THE
10 QUESTION OF WHETHER OR NOT A YOUTHFUL OFFENDER ADJUDICA-
11 TION IN THE BRONX COUNTY SUPREME COURT, AN ADULT COURT,
12 WHICH RESULTED IN A SENTENCE THAT WAS SERVED IN A JUVENILE
13 FACILITY QUALIFIES FOR THE POINTS UNDER, UNDER THE
14 GUIDELINES.

15 MR. STAMBAUGH: YOUR HONOR, IF I MAY HAVE
16 ANOTHER MOMENT WITH MY CLIENT.

17 THE COURT: YOU MAY.

18 MR. STAMBAUGH: THANK YOU, YOUR HONOR.

19 (OFF-THE-RECORD DISCUSSION BETWEEN THE DEFENDANT AND
20 HIS ATTORNEY)

21 MR. STAMBAUGH: YOUR HONOR, AND IT MAY BE
22 SOMETHING MY CLIENT MAY WISH TO ADDRESS THE COURT
23 REGARDING, AND ACTUALLY IT GOES BACK TO HIS PRESENTENCE
24 REPORT. HE'S STATING THAT WHEN HE WAS SERVING TIME IN
25 THAT JUVENILE DETENTION FACILITY, HE ACTUALLY PICKED UP A

1 CHARGE THERE, AND I BELIEVE IT WAS CATEGORIZED LIKE
2 HARASSMENT OF AN EMPLOYEE. DURING THAT TIME PERIOD, AND
3 THEN ON THERE HE SAYS IT ALSO SHOWS THE ADDRESS OF THE
4 JUVENILE DETENTION FACILITY, SO HE WAS IN A JUVENILE
5 DETENTION FACILITY, AND THAT SHOWS WHERE HE SERVED HIS
6 TIME BECAUSE HE PICKED UP THAT CHARGE THERE. HE SAID HE
7 WAS THERE FOR TWO YEARS -- HE SAYS THAT WAS 300 SOUTH
8 MCCORMICK ROAD IN NEW YORK.

9 YOUR HONOR, I DON'T KNOW IF IT'S TAKEN INTO
10 ACCOUNT IN HIS REPORT, BUT PART OF THE INFORMATION WE GOT
11 IN OUR DISCOVERY WAS, I GUESS, WOULD BE THE CRIMINAL
12 HISTORY RECORD OF THE DEFENDANT, AND IT DOES SAY THAT HE
13 WAS CHARGED WITH AGGRAVATED HARASSMENT OF AN EMPLOYEE BY
14 AN INMATE.

15 THE COURT: IT DOES.

16 MR. BOWMAN: I GUESS MY QUESTION, YOUR HONOR,
17 ARE WE REFERRING TO THE -- IS THAT THE 2009 MATTER, OR
18 THERE IS LISTED IN PARAGRAPH 34, NUMBER 12, HARASSMENT
19 SECOND DEGREE.

20 MR. STAMBAUGH: YOUR HONOR, I BELIEVE IT'S THE
21 2009.

22 THE COURT: IT APPEARS TO BE THE PARAGRAPH 35.

23 MR. BOWMAN: OKAY.

24 THE COURT: ANYTHING ELSE, MR. STAMBAUGH? I
25 DON'T MEAN TO CUT YOU OFF.

1 MR. STAMBAUGH: NO, YOUR HONOR.

2 THE COURT: ANYTHING ELSE FROM THE GOVERNMENT,
3 MR. BOWMAN?

4 MR. BOWMAN: YOUR HONOR, LOOKING AT THIS PORTAL
5 REPORT -- NOW, THIS IS, OF COURSE, NOT JUST AN NCIC
6 REPORT, IT GOES INTO A LOT OF DETAIL, SHOWING THE DATE FOR
7 ARRAIGNMENT, SHOWING THE ACTUAL STATUTES CHARGED, REFERS
8 TO A TRANSFER TO SUPERIOR COURT. THEN IT INDICATES MARCH
9 2, 2007, DISMISSED, SUPERSEDED AS TO ASSAULT II; REFLECTS
10 AN ARRAIGNMENT, REFLECTS AT THE BOTTOM OF PAGE 11 A
11 CONVICTION DATE OF OCTOBER 12, 2007.

12 THE COURT: IT ACTUALLY SHOWS A LITTLE BIT MORE
13 THAN THAT. IT SHOWS THAT AFTER SUPERSEDING THE CASE WAS
14 ASSIGNED IN THE BRONX COUNTY SUPREME COURT.

15 MR. BOWMAN: CORRECT, YOUR HONOR; AND GOING
16 BACK UP TO THAT, OF COURSE, SHOWS NOT ONLY THAT, ONCE IT
17 WAS REASSIGNED, HE'S ARRAIGNED. APPARENTLY HE WAS PLACED
18 ON BOND BECAUSE THEN AFTER THE CONVICTION, BECAUSE THEN IN
19 FEBRUARY OF 2008, A BENCH WARRANT ISSUED FOR HIS ARREST;
20 AND THEN HE'S ULTIMATELY SENTENCED ON MARCH 28, 2008, AND
21 THERE'S ALSO AN ORDER OF PROTECTION. AND WE'RE SORT OF
22 IN -- WE'RE IN THIS DIFFICULT SITUATION HERE, YOUR HONOR,
23 WHERE THE ONLY PERSON THAT HAS ACCESS TO THE RECORDS, IT
24 WOULD APPEAR, IS THE DEFENDANT. I DON'T KNOW WHY THE
25 RECORDS BEYOND THESE ARE UNDER SEAL SINCE THESE PAINT A

1 PICTURE, MAYBE THAT IT'S TO PROTECT A VICTIM, I DON'T
2 KNOW, YOUR HONOR; BUT WHAT WE -- WHAT I THINK WE HAVE HERE
3 IS A SITUATION WHERE IT WOULD TAKE AN ACTUAL, IT WOULD
4 TAKE AN ACTUAL RELEASE SIGNED BY THE DEFENDANT BEFORE THE
5 COURT APPARENTLY WOULD AUTHORIZE THE RELEASE OF THOSE
6 RECORDS.

7 SO WHILE THE GOVERNMENT HAS A CERTAIN BURDEN
8 HERE, I DON'T HAVE THE POWER TO, TO HAVE THE DEFENDANT
9 EXECUTE A RELEASE, YOUR HONOR, SO THIS IS ALL THAT -- THIS
10 IS ALL, OF COURSE, THAT WE COULD RELY UPON, YOUR HONOR.

11 THE COURT: ALL RIGHT. MS. JOSEPH, MAYBE YOU
12 NEED TO TAKE THE WITNESS STAND FOR JUST A MINUTE AND LET
13 ME CLARIFY WHAT THIS DOCUMENT IS, AND LET'S MAKE THE
14 DOCUMENT PART OF THE RECORD HERE.

15 PROBATION OFFICER JOSEPH: YOUR HONOR, I'M NOT
16 SURE I CAN.

17 THE COURT: YOU KNOW WHERE THIS CAME FROM?

18 PROBATION OFFICER JOSEPH: THIS IS NATHAN'S
19 CASE, AND I'M NOT REALLY SURE WHERE HE GOT THIS, YOUR
20 HONOR. I APOLOGIZE.

21 THE COURT: HAVE YOU SEEN ONE LIKE THIS BEFORE?

22 PROBATION OFFICER JOSEPH: I HAVE NOT.

23 HE WILL BE BACK -- HE TOLD ME HE WOULD BE BACK
24 BETWEEN 3:00 AND 3:30 PROBABLY. I HATE FOR THE COURT TO
25 CONTINUE THIS UNTIL LATER, BUT I'M NOT SURE REALLY WHAT

1 ALL I CAN ADD AS TO WHAT THIS IS.

2 THE COURT: I THINK I JUST ASSUMED THIS WAS AN
3 NCIC REPORT, BUT I DON'T THINK IT IS. IT APPEARS TO HAVE
4 COME FROM A WEBSITE.

5 PROBATION OFFICER JOSEPH: I WANT TO SAY HE GOT
6 THIS FROM THE U.S. PROBATION IN NEW YORK, BUT I'M NOT 100
7 PERCENT SURE, YOUR HONOR. I APOLOGIZE.

8 MR. BOWMAN: YOUR HONOR, WHEN I DEAL WITH
9 AGENCIES HERE IN TENNESSEE, THEY USE A WEBSITE THAT'S,
10 THEY REFER TO AS A PORTAL, CRIMINAL JUSTICE PORTAL.

11 THE COURT: THAT APPEARS TO BE WHAT THIS IS.

12 MR. BOWMAN: AND THAT'S WHAT I'M ASSUMING IT
13 IS, AND SO YOU OR I COULD NOT ACTUALLY GO INTO THAT AND
14 LOOK AT ANYTHING. IT WOULD REQUIRE SOMEBODY THAT'S BEEN
15 TRAINED AND AUTHORIZED TO USE IT AND HAS A PASSWORD.

16 MR. STAMBAUGH: YOUR HONOR, I BELIEVE, YOUR
17 HONOR, THAT'S CORRECT. I BELIEVE, I THINK THAT'S PROBABLY
18 THE TYPE OF DOCUMENT THAT IT IS. I ALSO JUST WANT TO PUT
19 ON THE RECORD THAT I BELIEVE MY CLIENT SIGNED EVERYTHING
20 THAT HE WAS REQUIRED TO DO FROM A RELEASE STANDPOINT. I'M
21 NOT SURE WHAT ELSE HE COULD HAVE SIGNED TO HAVE AIDED THE
22 COURT TODAY.

23 THE COURT: WELL, HERE'S WHAT IT APPEARS THIS
24 DOCUMENT SHOWS: MR. SUERO APPEARS TO HAVE BEEN ARRESTED
25 ON FEBRUARY 5, 2007, FOR OFFENSES ALLEGEDLY COMMITTED ON

1 FEBRUARY 3, 2007, AND WAS CHARGED WITH VARIOUS FELONY AND
2 MISDEMEANOR CASES, THE MOST SERIOUS BEING A FIRST DEGREE
3 ROBBERY CHARGE IN THE BRONX COUNTY CRIMINAL COURT, CASE
4 NUMBER OF 2007 BX008538. IT APPEARS THAT ON THE SAME DAY
5 THE CASE WAS TRANSFERRED TO THE SUPERIOR COURT, BUT IT
6 INDICATES THERE WAS NO ARRAIGNMENT IN THE SUPERIOR COURT,
7 AND THE CASE WAS SUPERSEDED ON MARCH 2, 2007, AND
8 SUBSEQUENTLY THE DEFENDANT WAS ARRAIGNED ON APRIL 11,
9 2007, ON VARIOUS FELONY AND MISDEMEANOR CHARGES IN THE
10 BRONX COUNTY SUPREME COURT IN CASE NUMBER 00923-2007. THE
11 REPORT INDICATES THAT MR. SUERO WAS CONVICTED ON OCTOBER
12 12, 2007, OF ROBBERY IN THE FIRST DEGREE AND ADJUDICATED A
13 YOUTHFUL OFFENDER AFTER HIS PLEA OF GUILTY, THAT GUILTY
14 PLEA APPARENTLY BEING IN FULL SATISFACTION OF ALL OF THE
15 CHARGES CONTAINED IN THE INDICTMENT.

16 I MEAN, IT DOES APPEAR AS REFLECTED IN THE
17 PRESENTENCE REPORT THAT HE WAS SENTENCED TO A TERM, AN
18 INDETERMINATE TERM OF 16 MONTHS TO 48 MONTHS, OR 16 MONTHS
19 TO 4 YEARS. MR. SUERO DOES NOT CONTEST THAT HE WAS
20 CONVICTED IN THE BRONX COUNTY SUPREME COURT, NOR DOES HE
21 CONTEST THAT HE WAS ADJUDICATED A YOUTHFUL DEFENDER --
22 YOUTHFUL OFFENDER, HE SIMPLY POINTS OUT TO THE COURT THAT
23 HE WAS REQUIRED TO SERVE HIS SENTENCE NOT IN AN ADULT
24 FACILITY, BUT IN A JUVENILE FACILITY.

25 NOW, THE QUESTION, OF COURSE, IS WHETHER OR NOT

1 THAT QUALIFIES FOR THE THREE CRIMINAL HISTORY POINTS
2 ASSIGNED IN PARAGRAPH 34 OF THE PRESENTENCE REPORT PUR-
3 SUANT TO SECTION 4A1.1(A) WHICH PROVIDES FOR THREE POINTS
4 FOR EACH PRIOR SENTENCE OF IMPRISONMENT EXCEEDING ONE YEAR
5 AND ONE MONTH.

6 MORE SPECIFICALLY, I SUPPOSE THE QUESTION IS
7 REALLY WHETHER OR NOT THIS WAS AN ADULT CONVICTION. OF
8 COURSE, UNDER THE GUIDELINES DEFINITION ADULT CONVICTIONS
9 INCLUDE OFFENSES COMMITTED BEFORE, PRIOR TO A DEFENDANT'S
10 EIGHTEENTH BIRTHDAY IF HE WAS CONVICTED AS AN ADULT AND
11 RECEIVED A SENTENCE OF IMPRISONMENT EXCEEDING ONE YEAR AND
12 ONE MONTH.

13 THERE IS NO SIXTH CIRCUIT AUTHORITY ON THIS
14 ISSUE SO FAR AS THE COURT CAN TELL. THERE HAVE BEEN A
15 SERIES OF CASES, HOWEVER, IN THE SECOND CIRCUIT DEALING
16 WITH THE ISSUE; AND I DIDN'T HAVE ALL OF THESE PREPARED,
17 BUT ONE OF THE EARLIEST IS THE CASE OF UNITED STATES OF
18 AMERICA VERSUS MALIK DRISKELL, FOUND AT 277 F.3D 150. IN
19 THAT PARTICULAR CASE THE DEFENDANT WAS CONVICTED OF
20 ATTEMPTED MURDER IN THE SECOND DEGREE WHEN HE WAS 17. HE
21 WAS SUBSEQUENTLY ADJUDICATED A YOUTHFUL OFFENDER, RECEIVED
22 HIS SENTENCE EXCEEDING ONE YEAR AND ONE MONTH AND SERVED
23 THAT TIME IN AN ADULT PRISON. IN THE DRISKELL CASE THE
24 SECOND CIRCUIT ADDRESSED THE SPECIFIC QUESTION OF WHETHER
25 OR NOT SUCH A CONVICTION SUBSEQUENTLY REPLACED BY A

1 YOUTHFUL OFFENDER ADJUDICATION COULD EVER CONSTITUTE AN
2 ADULT CONVICTION UNDER SECTION 4A1.1. THE SECOND CIRCUIT
3 IN THAT CASE HELD THAT IT WAS PROPERLY COUNTED AND THE
4 CRIMINAL HISTORY POINTS PROPERLY ASSESSED.

5 THEN IN -- THAT CASE WAS DECIDED IN 2002. THEN
6 IN 2004 IN THE CASE OF UNITED STATES VERSUS CUELLO, 357
7 F.3D 162, THE SECOND CIRCUIT AGAIN CONSIDERED AN APPEAL BY
8 A DEFENDANT WHO HAD BEEN CONVICTED OF UNLAWFUL RECEIPT,
9 POSSESSION OR TRANSPORTATION OF FIREARMS OR AMMUNITION AND
10 ENGAGING IN PROHIBITED TRANSACTIONS INVOLVING FIREARMS FOR
11 AMMUNITION. THE QUESTION WAS WHETHER OR NOT A PRIOR
12 YOUTHFUL OFFENDER ADJUDICATION COUNTED AS A FELONY OFFENSE
13 FOR THE PURPOSE OF ESTABLISHING THE BASE OFFENSE LEVEL.
14 THE CASE HINGED ON WHETHER OR NOT A 1996 CONTROLLED
15 SUBSTANCE OFFENSE IN WHICH THE DEFENDANT HAD BEEN
16 DESIGNATED A YOUTHFUL OFFENDER CONSTITUTED A PRIOR FELONY
17 CONVICTION.

18 IT EXPLAINS A LITTLE BIT ABOUT WHAT THE
19 YOUTHFUL OFFENDER STATUTE IS. APPARENTLY UNDER THAT
20 STATUTE -- THAT IS A LEGAL STATUS WHICH THE COURTS OF NEW
21 YORK MAY ASSIGN TO A CONVICTED DEFENDANT BETWEEN THE AGES
22 OF 16 AND 19 WHO MEET CERTAIN CONDITIONS. THE COURTS MAY
23 DESIGNATE AN ELIGIBLE CONVICTED DEFENDANT A YOUTHFUL
24 OFFENDER IF IN THE OPINION OF THE COURT THE INTERESTS OF
25 JUSTICE WOULD BE SERVED BY RELIEVING THE ELIGIBLE YOUTH

1 FROM THE ONUS OF A CRIMINAL RECORD. ONCE A CRIMINAL
2 DEFENDANT -- CONVICTED DEFENDANT IS ADJUDICATED A YOUTHFUL
3 OFFENDER, HIS CONVICTION IS DEEMED VACATED AND REPLACED BY
4 A YOUTHFUL OFFENDER FINDING, AND THE COURT IMPOSES A
5 YOUTHFUL OFFENDER SENTENCE UNDER NEW YORK PENAL CODE.
6 THAT APPEARS TO BE WHAT HAPPENED HERE. THIS CASE, SO FAR
7 AS I CAN TELL, MAKES NO MENTION OF WHERE THE DEFENDANT HAD
8 SERVED HIS SENTENCE. THE DEFENDANT ARGUED, HOWEVER, THAT
9 HIS YOUTHFUL OFFENDER ADJUDICATION DID NOT CONSTITUTE A
10 FELONY OFFENSE BECAUSE THE YOUTHFUL OFFENDER ADJUDICATION
11 HAD THE EFFECT OF VACATING AND REPLACING HIS CONVICTION.
12 THE SECOND CIRCUIT REJECTED THAT ARGUMENT, HOLDING THAT
13 THE DEFENDANT'S POSITION WAS FORECLOSED BY THE SECOND
14 CIRCUIT'S DECISION IN UNITED STATES VERSUS DRISKELL.

15 IN -- I THINK THAT WAS A 2004 CASE. IN 2003
16 THE SECOND CIRCUIT HAD CONSIDERED ANOTHER SIMILAR APPEAL
17 IN WHICH A MINOR DEFENDANT HAD BEEN ADJUDICATED A YOUTHFUL
18 OFFENDER AFTER AN ARMED ROBBERY CONVICTION. AGAIN, SO FAR
19 AS I CAN TELL, THIS CASE MAKES NO MENTION OF WHERE THE
20 DEFENDANT SERVED HIS SENTENCE. HE WAS 17 AT THE TIME. HE
21 WAS ADJUDICATED A YOUTHFUL OFFENDER, CONVICTION VACATED,
22 THEREAFTER COMMITTED SEVERAL OTHER OFFENSES AND WAS
23 EVENTUALLY DEPORTED TO THE DOMINICAN REPUBLIC. HE
24 RETURNED ILLEGALLY AND, OF COURSE, WAS CHARGED WITH
25 ILLEGAL REENTERING AND CONVICTED IN THE DISTRICT COURT,

1 AND THE DISTRICT COURT JUDGE IN THAT CASE APPLIED THE
2 THREE CRIMINAL HISTORY POINTS UNDER 4A1.1(A).

3 THE DEFENDANT CONTENDED ON APPEAL THAT HIS
4 YOUTHFUL OFFENDER ADJUDICATION PRECLUDED A FINDING THAT
5 HIS ARMED ROBBERY RESULTED IN ANY CONVICTION UNDER STATE
6 LAW; AND, ONCE AGAIN, THE SECOND CIRCUIT IN AN OPINION
7 WRITTEN BY JUDGE SOTOMAYOR, NOW A SUPREME COURT JUSTICE,
8 HELD THAT THE ARGUMENT WAS FORECLOSED BY DRISKELL. HERE'S
9 WHAT SHE SAID, "THIS ARGUMENT IS FORECLOSED BY OUR HOLDING
10 IN UNITED STATES VERSUS DRISKELL THAT A YOUTHFUL OFFENDER
11 ADJUDICATION REMAINS A CONVICTION IN SUBSTANCE REGARDLESS
12 OF ITS CHARACTERIZATION UNDER NEW YORK LAW." SHE GOES IN
13 TO SOME DISCUSSION ABOUT THE PURPOSE OF THE YOUTHFUL
14 OFFENDER ADJUDICATION UNDER NEW YORK LAW, INCLUDES THAT A
15 YOUTHFUL OFFENDER ADJUDICATION IS NOT INTENDED TO ABSOLVE
16 YOUTHFUL OFFENDERS OF CRIMINAL RESPONSIBILITY, BUT RATHER
17 TO PUNISH THEM FOR THEIR CRIMES WHILE AIDING IN THEIR
18 POST-CONVICTION REHABILITATION. SHE SAYS, "BECAUSE AN
19 ELIGIBLE YOUTH IS NOT DEEMED A YOUTHFUL OFFENDER UNTIL
20 AFTER HE HAS BEEN CONVICTED AS AN ADULT, AND THE COURT HAS
21 IN ITS DISCRETION DETERMINED THAT THE INTEREST OF JUSTICE
22 WOULD BE SERVED BY RELIEVING THE ELIGIBLE YOUTH FROM THE
23 ONUS OF A CRIMINAL RECORD DOES THE YOUTHFUL OFFENDER
24 ADJUDICATION OCCUR." AND SHE CITES DRISKELL'S HOLDING
25 THAT CONCLUDED THAT A YOUTHFUL OFFENDER ADJUDICATION DOES

1 NOT ALTER THE SUBSTANCE OF THE DEFENDANT'S ADULT
2 CONVICTION. THIS CASE ONCE AGAIN IS SILENT ON WHETHER OR
3 NOT THE DEFENDANT ACTUALLY SERVED ANY TIME; AND IF SO,
4 WHERE HE SERVED IT, GIVEN THAT YOUTHFUL OFFENDER
5 ADJUDICATION.

6 AND THEN, FINALLY, IN 2014 THE SECOND CIRCUIT
7 DECIDED THE CASE OF UNITED STATES VERSUS LASANE, 579
8 FED.APPX. 51, THAT WE'VE ALREADY TALKED ABOUT HERE, WHICH
9 CONCLUDES THAT A YOUTHFUL ADJUDICATION IN A CASE PROSE-
10 CUTED IN THE BRONX COUNTY SUPREME COURT, WHICH IS AN ADULT
11 FORUM, BUT WHICH HAD A SUBSEQUENT DESIGNATION AS A YOUTH-
12 FUL OFFENDER, NEVERTHELESS, COUNTED UNDER THE GUIDELINES
13 BECAUSE, IF I READ THE OPINION RIGHT, THE DEFENDANT WAS IN
14 FACT CONVICTED OF FELONIES, RECEIVED SENTENCES AMOUNTING
15 TO FELONY TIME; AND IN THIS PARTICULAR CASE, AS
16 MR. STAMBAUGH HAS POINTED OUT, HE DID IN FACT SERVE THOSE
17 SENTENCES IN THE NEW YORK DEPARTMENT OF CORRECTIONS ADULT
18 FACILITY. IT DOES NOT APPEAR TO ME, HOWEVER, THAT THE
19 FACT THAT THIS SENTENCE WAS SERVED IN AN ADULT FACILITY
20 WAS DISPOSITIVE OR BASICALLY HAD ANY, ANY IMPACT ON THIS
21 CASE OTHER THAN THE FACT THAT THE COURT DECIDED THAT IT'S
22 ONE MORE REASON WHY THIS WAS IN FACT AN ADULT CONVICTION
23 AND ULTIMATELY FOUND THAT DRISKELL AND CUELLO WERE WELL
24 SETTLED, PART OF A WELL SETTLED BODY OF LAW IN THE SECOND
25 CIRCUIT AND DECLINED TO DEPART FROM THOSE HOLDINGS. IN

1 OTHER WORDS, FOUND THAT THE YOUTHFUL OFFENDER ADJUDICATION
2 WAS IN FACT WITHIN THE SCOPE OF 4A1.1(A) AND THE
3 ASSESSMENT OF CRIMINAL HISTORY POINTS APPROPRIATELY.

4 NOW, THE DOCUMENT THAT THE PROBATION OFFICER
5 HAS APPARENTLY RELIED UPON FOR THE INFORMATION CONTAINED
6 IN THE PRESENTENCE REPORT DOES NOT APPEAR TO BE AN NCIC
7 REPORT, I MISSPOKE ON THAT EARLIER. WHAT IT APPEARS TO BE
8 IS A REPORT, A NEW YORK GOVERNMENT REPORT, OBTAINED AT A
9 WEBSITE CALLED E-JUSTICE NEW YORK THROUGH THIS PORTAL
10 DESIGNATION THAT MR. BOWMAN MENTIONED. INTERESTINGLY, THE
11 REPORT DOES REFERENCE AN NCIC NUMBER. PRESUMABLY IF AN
12 NCIC REPORT WERE RUN, IT WOULD SHOW THE CONVICTION BECAUSE
13 OF THAT NUMBER, BUT. IN ANY EVENT, IF THIS DOCUMENT IS
14 WHAT IT APPEARS TO BE, I THINK THAT'S -- MAYBE WE HAVE TO
15 HAVE OFFICER WOLFE CONFIRM WHERE HE GOT IT; BUT IF IT'S
16 WHAT IT APPEARS TO BE, THEN I THINK, ESPECIALLY IN LIGHT
17 OF MR. SUERO'S ACKNOWLEDGMENT THAT HE WAS CONVICTED IN THE
18 BRONX COUNTY SUPREME COURT, AN ADULT COURT, OF A FIRST
19 DEGREE ROBBERY FELONY CHARGE, THAT THERE WAS A SUBSEQUENT
20 YOUTHFUL OFFENDER ADJUDICATION, THAT THE SECOND CIRCUIT
21 PRECEDENT IS PERSUASIVE -- I WOULD CERTAINLY PREFER TO
22 HAVE SIXTH CIRCUIT PRECEDENT HERE, BUT THERE DOES NOT
23 APPEAR TO BE ANY, AS I MENTIONED; BUT I DO FIND THE SECOND
24 CIRCUIT, WHICH, OF COURSE, INCLUDES NEW YORK, THESE CASES,
25 TO PEOPLE BE PERSUASIVE ON THE ISSUE.

1 SO WHERE THAT LEAVES US IS, IN MY VIEW, WITH A
2 DETERMINATION THAT IT MAKES NO DIFFERENCE WHERE MR. SUERO
3 SERVED THE SENTENCE; THAT'S NOT A DETERMINATIVE FACTOR
4 HERE. HE WAS CONVICTED OF A FELONY OFFENSE, HE RECEIVED A
5 SENTENCE OF MORE THAN A YEAR AND A MONTH, HE WAS SUBSE-
6 QUENTLY ADJUDICATED AS A YOUTHFUL OFFENDER UNDER NEW YORK
7 LAW. I THINK THAT'S THE END OF THE INQUIRY, AND AS A
8 RESULT THE OBJECTION IS DUE TO BE OVERRULED.

9 NOW, MR. STAMBAUGH, IF YOU WANT US TO WAIT FOR
10 MR. WOLFE, WE WILL, AND HE CAN ESTABLISH WHERE HE GOT
11 THIS; BUT I THINK IT'S PRETTY CLEAR THAT WHAT HE'S GOING
12 TO TELL US IS HE OBTAINED THIS FROM PROBATION IN NEW YORK,
13 WHO OBTAINED IT FROM THIS E-JUSTICE NEW YORK WEBSITE.

14 MR. STAMBAUGH: I BELIEVE THAT'S WHAT HE'D
15 TESTIFY TO, YOUR HONOR. HE AND I ABOUT IT WHEN HE SENT
16 THE DOCUMENT TO ME.

17 PROBATION OFFICER JOSEPH: YOUR HONOR, HE SAID
18 HE'LL BE HERE IN ABOUT 15 MINUTES. I BELIEVE HE DID GET
19 IT FROM THE U.S. PROBATION OFFICE IN NEW YORK. NOW, WHERE
20 THEY GOT IT, I'M NOT SURE. HE MIGHT BE ABLE TO ANSWER
21 THAT QUESTION, BUT --

22 THE COURT: WELL, I THINK THE WEBSITE AT THE
23 BOTTOM INDICATES WHERE THEY GOT IT, BUT OKAY. HE'S
24 PROBABLY GOING TO BE HERE IN 15 MINUTES.

25 MR. BOWMAN: I CHECKED THAT WEBSITE ON MY

1 PHONE, YOUR HONOR, AND IT DOES REQUIRE A LOG-IN, BUT IT
2 APPEARS TO BE JUST WHAT I REPRESENTED TO THE COURT.

3 THE COURT: ALL RIGHT. I THINK THAT'S RIGHT.
4 SO I'D LIKE TO FILE A COPY OF THIS. MR. STAMBAUGH, I
5 DON'T WANT TO FILE YOURS, YOU'VE GOT SOME NOTES ON IT.

6 MR. STAMBAUGH: THAT'S CORRECT, YOUR HONOR.

7 THE COURT: SO I'D LIKE TO FILE A CLEAN COPY OF
8 THIS REPORT AS AN EXHIBIT TO THIS HEARING.

9 MR. BOWMAN: THERE'S ACTUALLY NOTES ON
10 PROBATION COPY AS WELL. I'M NOT SURE IF --

11 THE COURT: WELL, MR. STAMBAUGH HAS SOME NOTES
12 ON THE BACK OF HIS.

13 MR. BOWMAN: OKAY. IT'S PROBABLY SOME OF
14 MR. WOLFE'S NOTES YOUR HONOR.

15 PROBATION OFFICER JOSEPH: THERE'S A FEW NOTES
16 ON HERE, YOUR HONOR, BUT I CAN GIVE YOU --

17 MR. STAMBAUGH: THERE WERE, YOUR HONOR, BUT
18 THEY WERE JUST --

19 THE COURT: THEY DIDN'T APPEAR TO HAVE ANYTHING
20 TO DO. THOSE --

21 MR. STAMBAUGH: NO, NO, NOT AT ALL, YOUR HONOR.
22 THIS WAS JUST FOR MY CLIENT'S DOCUMENTATION, THAT'S ALL
23 THAT WAS.

24 PROBATION OFFICER JOSEPH: I APOLOGIZE, YOUR
25 HONOR, THAT WE DON'T HAVE AN EXTRA COPY OF THIS ON HAND.

1 THE COURT: WELL, I'M SURE MS. HOPSON CAN MAKE
2 US A COPY.

3 ALL RIGHT THEN, WITH THAT RULING, I'M GOING TO
4 ADOPT THIS PRESENTENCE REPORT AS THE COURT'S FINDINGS IN
5 THE CASE. I WILL APPLY AN ADVISORY RANGE OF 70 TO 87
6 MONTHS AND A STATUTORY RANGE OF A MANDATORY MINIMUM TERM
7 OF 5 YEARS TO A MAXIMUM TERM OF 40.

8 ALL RIGHT. MR. BOWMAN, I'LL HEAR THE
9 GOVERNMENT'S ARGUMENT.

10 MR. BOWMAN: THANK YOU, YOUR HONOR.

11 AS THE COURT JUST ALLUDED TO, MR. SUERO FACES A
12 CRIMINAL HISTORY CATEGORY OF 3; AND I THINK WHAT'S MOST
13 SURPRISING ABOUT THAT IS THAT HE'S ONLY 23 YEARS OF AGE,
14 YOUR HONOR. SO HE'S IN A SHORT PERIOD OF TIME AMASSED
15 THOSE CRIMINAL HISTORY POINTS. I NOTED THAT EACH OF THOSE
16 CRIMINAL HISTORY POINTS IS ATTACHED TO A VIOLENT
17 OFFENSE.

18 THE COURT: MR. BOWMAN, I HATE TO INTERRUPT
19 YOUR THOUGHT, BUT IF YOU COULD HOLD IT FOR JUST A MINUTE.
20 I THINK I MISSPOKE JUST A MINUTE AGO. I THINK I SAID
21 THERE WAS A CRIMINAL HISTORY CATEGORY OF 2. THERE'S A
22 CRIMINAL HISTORY CATEGORY OF 3. WE REDUCED THE CRIMINAL
23 HISTORY POINTS TO 5, WHICH IS CRIMINAL HISTORY CATEGORY 3.

24 MR. BOWMAN: CORRECT, BECAUSE THE ORIGINAL PSR
25 INDICATED A HISTORY OF 4, YOUR HONOR. THERE WAS A FIRST

1 ADDENDUM TO THE REPORT THAT INDICATED IT WAS A CRIMINAL
2 HISTORY CATEGORY 3.

3 BUT WHAT I NOTED IS THAT EACH OF THOSE
4 CONVICTIONS, YOUR HONOR, IS A VIOLENT CONVICTION.

5 THE COURT HAS REVIEWED THE PSR, OBVIOUSLY. THE
6 FACTUAL BASIS, THE COURT IS AWARE OF THE WAY THE DEFENDANT
7 GOT TO WHERE HE IS, AND THE OFFENSE CONDUCT WHICH INVOLVED
8 HIM AND THE OTHER INDIVIDUALS INVOLVED IN THE CONSPIRACY
9 TO DISTRIBUTE CRACK COCAINE IN THE EASTERN DISTRICT OF
10 TENNESSEE COMING OUT OF NEW YORK.

11 THAT SAID, YOUR HONOR, TAKING THE DEFENDANT'S
12 YOUTHFULNESS INTO CONSIDERATION AND TAKING INTO CONSIDERA-
13 TION THE EASE, SUCH AS IT WERE, IN OBTAINING A PLEA IN
14 THIS CASE, WE DID AGREE TO LET HIM COMMIT -- OR PERMIT HIM
15 TO PLEA TO A LESSER INCLUDED OFFENSE; AND FOR THAT REASON
16 HE DOES FACE A MINIMUM MANDATORY 5 YEARS HERE, BUT HE DOES
17 NOT FACE THE 10 YEAR MINIMUM MANDATORY HE WOULD HAVE FACED
18 HAD HE PLED OR BEEN CONVICTED OF IN EXCESS OF 280 GRAMS;
19 AND I KNOW THE COURT HAS LOOKED AT THE FACTUAL BASIS, AND
20 I THINK IT IS CLEAR FROM THERE THAT THERE WAS CERTAINLY A
21 VERY GOOD ARGUMENT THERE FOR RESPONSIBILITY FOR IN EXCESS
22 OF 280 GRAMS. I CERTAINLY THINK THERE'S A GOOD CHANCE THE
23 JURY WOULD HAVE HELD HIM ACCOUNTABLE FOR MORE THAN 280
24 GRAMS, PARTICULARLY TAKING INTO CONSIDERATION THE EXTENT
25 OF THE CONSPIRACY. AND FOR ALL THOSE REASONS, YOUR HONOR,

1 I WOULD SUGGEST THAT A SENTENCE IN THE UPPER HALF OF THE
2 GUIDELINE RANGE IS WHAT WOULD BE APPROPRIATE IN THIS CASE.

3 THE COURT: ALL RIGHT.

4 ALL RIGHT, MR. BOWMAN, THANK YOU VERY MUCH.

5 THE COURT: ALL RIGHT. MR. STAMBAUGH.

6 MR. STAMBAUGH: YOUR HONOR, I KNOW THE COURT
7 HAS ALREADY REVIEWED MY SENTENCING MEMORANDUM.

8 THE COURT: I HAVE.

9 MR. STAMBAUGH: IT WAS NOT LENGTHY. AGAIN,
10 IT'S A SITUATION WHERE MY CLIENT PLEADED GUILTY TO A
11 LESSER INCLUDED, NOT COOPERATED WITH THE GOVERNMENT. HE
12 HAS A NUMBER OF FACTORS, OF COURSE, THAT A NUMBER OF
13 DEFENDANTS HAVE, DISADVANTAGED YOUTH, BEEN ADDICTED TO
14 DRUGS FOR QUITE SOME TIME. THOSE ARE THINGS THAT THIS
15 COURT TYPICALLY SEES, AND BECAUSE OF THAT SOMETIMES I
16 DON'T BELIEVE THERE'S A GOOD FAITH ARGUMENT WITH THAT.

17 WITH THAT BEING SAID, JUST TO TOUCH ON WHAT
18 U.S.A. BOWMAN JUST MENTIONED IS, YES, A LOT OF THESE
19 THINGS DID HAPPEN WHEN HE WAS YOUNGER BECAUSE HE IS A
20 YOUNGER PERSON. I THINK HIS -- AGAIN, WE'RE TALKING ABOUT
21 DISADVANTAGED YOUTH, I THINK HIS YOUTH DID PLAY A PART
22 INTO WHERE HE IS TODAY. I THINK HE WAS, WHEN THIS ALL
23 OCCURRED, I THINK HE WAS ON A DIFFERENT PATH IN LIFE, WAS
24 EMPLOYED, TRYING TO DO DIFFERENT THINGS WITH HIS LIFE; BUT
25 THERE'S NO DOUBT IF YOU TAKE HIS CRIMINAL RECORD FROM HIS

1 EARLY TEENS ON TILL NOW, HE'S BEEN INVOLVED IN A NUMBER OF
2 INCIDENTS. SOME OF THOSE HAVE BEEN VIOLENT. SOME OF
3 THOSE HAVE BEEN DRUG RELATED AS WE ARE HERE.

4 WHAT MY CLIENT IS ASKING FOR IS A SENTENCE AT
5 THE BOTTOM OF THE GUIDELINE RANGE. IT'S A SITUATION
6 AGAIN, HE WASN'T ONE OF THE MAIN CONSPIRATORS IN THIS
7 CASE, HE WAS MORE OF AN ISSUE OF, I'M NOT GOING TO SAY A
8 MINOR ROLE PLAYER, I ALREADY SAID THAT IN MY SENTENCING
9 MEMORANDUM, BUT HE WASN'T A MAJOR PARTICIPANT; THAT'S WHY
10 HE DOESN'T HAVE ANY ENHANCEMENTS OR ANY OF THOSE DIFFERENT
11 FACTORS. HE DOES TAKE RESPONSIBILITY FOR WHAT HE'S DONE,
12 AND HE WILL ADDRESS THAT WITH THE COURT, BUT WE ARE ASKING
13 FOR A MINIMUM GUIDELINE RANGE FOR THIS ISSUE.

14 AND THE OTHER ISSUE WE HAVE, YOUR HONOR, I'M
15 JUST GOING TO BE QUITE, QUITE BLUNT, IS MY CLIENT MAY HAVE
16 OTHER ISSUES OTHER PLACES, AND SOME OF THESE FACTS IN THIS
17 CASE MAY PLAY INTO THE FACTORS IN THOSE CASES IN ANOTHER
18 STATE. I KNOW WHAT MY CLIENT HAS BEEN SERVED WITH, AND
19 WHAT HE'S BEEN SERVED WITH IS DEALS WITH A CASE OUT OF
20 VERMONT. THE FACT OF THE MATTER IS THAT SOMEWHAT WILL
21 COME INTO PLAY AND THAT MAY BE SOMETHING THAT THE SENTENC-
22 ING COURT IN VERMONT WILL LOOK AT; BUT, NONETHELESS, WE'RE
23 ASKING FOR A MINIMUM GUIDELINE SENTENCE, YOUR HONOR.

24 THAT'S ALL WE HAVE.

25 THE COURT: YOU'RE TELLING ME SOMETHING THAT I

1 DIDN'T KNOW. THERE ARE PENDING CHARGES IN VERMONT?

2 MR. STAMBAUGH: THAT'S MY UNDERSTANDING, YOUR
3 HONOR.

4 THE COURT: WHAT'S THE NATURE OF THOSE CHARGES?

5 MR. STAMBAUGH: YOUR HONOR, UNDERSTAND THIS IS
6 WHAT MY CLIENT TELLS ME BECAUSE, AGAIN, I BELIEVE THESE
7 MATTERS ARE SEALED. I BELIEVE HE'S ALREADY BEEN SERVED
8 WITH THE DOCUMENTATION, IT'S A DRUG CONSPIRACY OUT OF THE
9 STATE OF VERMONT AND MAY INVOLVE SOME OF THE SAME PEOPLE
10 WE HAVE HERE INVOLVED IN THIS DRUG CONSPIRACY, BUT IT IS
11 OUT OF FEDERAL DISTRICT COURT IN VERMONT.

12 THE COURT: ALL RIGHT. MR. BOWMAN, DO YOU
13 AGREE WITH MR. STAMBAUGH'S CHARACTERIZATION THAT THE
14 DEFENDANT IS NOT A MAJOR PARTICIPANT?

15 MR. BOWMAN: YOUR HONOR, THIS IS A, THIS IS A
16 CASE WHERE WE ONLY HAD FOUR DEFENDANTS CHARGED, AND I
17 DON'T KNOW THAT WE EVER REALLY CAME TO A -- CAME TO
18 UNDERSTAND THE COMPLETE AND TOTAL INVOLVEMENT OF
19 MR. SUERO. WE KNOW THAT HE WAS TRAVELING HERE FROM NEW
20 YORK, WE KNOW THAT HE WAS TRAVELING WITH MR. CHRISTOPHER
21 AND THAT THEY WERE DISTRIBUTING CRACK COCAINE, OF COURSE,
22 IN THE DISTRICT; THAT MS. SOUTHERLAND, WHO DID DEBRIEF,
23 INDICATED THAT SHE DISTRIBUTED CRACK COCAINE IN JOHNSON
24 CITY, AND SHE DID THAT AT THE BEHEST OF CHRISTOPHER AND
25 MR. SUERO. SHE INDICATED THAT ON ONE OCCASION SHE

1 DISTRIBUTED A TOTAL OF 92 GRAMS OF CRACK ON BEHALF OF
2 THEM. ON HER SECOND TRIP TO JOHNSON CITY SHE ALSO
3 DISTRIBUTED CRACK COCAINE TO A PERSON WHO WAS ACTING AS AN
4 UNDERCOVER SOURCE FOR THE THIRD -- NOT FOR THE THIRD, BUT
5 FOR THE SECOND JUDICIAL DISTRICT DRUG TASK FORCE; THAT SHE
6 STATED ON THAT OCCASION SHE DISTRIBUTED 12 MORE EIGHT
7 BALLS BESIDES THAT. SHE ALSO HAD AN EIGHT BALL OF CRACK
8 COCAINE THAT WAS RECOVERED FROM HER BY AGENTS.

9 SO, SO CERTAINLY WHILE THERE WAS NO ENHANCE-
10 MENTS APPLIED IN THIS CASE, YOUR HONOR, WHAT WE HAVE WAS,
11 I THINK, CERTAINLY, YOU KNOW, AND THE GOVERNMENT OBVIOUSLY
12 DIDN'T OBJECT, BUT I THINK THERE CERTAINLY IS A BASIS FOR
13 WHICH YOU CAN FIND THAT MS. SOUTHERLAND AT THE VERY LEAST
14 WAS ACTING UNDER THE CONTROL AND DIRECTION OF MR. SUERO.
15 FROM WHAT WE SAW AND WHAT'S OUTLINED IN THE FACTUAL BASIS,
16 IT WOULD APPEAR THAT MR. SUERO WAS ACTING IN SOMEWHAT OF A
17 PARTNERSHIP CAPACITY WITH MR. CHRISTOPHER; AND THAT'S WHAT
18 WE KNOW, YOUR HONOR. SO, NO, I DON'T THINK THAT MINIMAL
19 PARTICIPANT OR MINOR ROLE IS APPROPRIATE, AND CERTAINLY
20 THERE WAS NO ADJUSTMENT MADE FOR MINOR OR MINIMAL ROLE
21 PARTICIPANT IN THE CASE.

22 THE COURT: ALL RIGHT, MR. BOWMAN, THANK YOU.

23 ALL RIGHT. MR. SUERO, COME UP TO THE PODIUM,
24 PLEASE, WITH YOUR ATTORNEY.

25 I TELL YOU WHAT, I SAW MR. WOLFE COME IN.

1 LET'S GET THAT ON THE RECORD BEFORE I FORGET TO DO IT, ALL
2 RIGHT.

3 MR. WOLFE, THE QUESTION HAS ARISEN AS TO WHERE
4 YOU OBTAINED THE DOCUMENT THAT'S BEEN PROVIDED TO COUNSEL
5 AND NOW PROVIDED TO THE COURT WHICH OUTLINES MR. SUERO'S
6 YOUTHFUL OFFENDER ADJUDICATION IN NEW YORK.

7 PROBATION OFFICER WOLFE: YES, JUDGE. I
8 OBTAINED THE DOCUMENT FROM THE UNITED STATES PROBATION
9 OFFICE IN THE BRONX AREA. THEY WERE UNSUCCESSFUL IN
10 OBTAINING THE DOCUMENTS STRAIGHT FROM THE CLERK'S OFFICE
11 IN THAT AREA, SO THE CRIMINAL REPOSITORY YEAR THAT I GOT
12 THE RAP SHEET FOR THAT THEY CALLED IT WAS OBTAINED FROM
13 THE UNITED STATES PROBATION OFFICE IN NEW YORK.

14 THE COURT: IS IT YOUR UNDERSTANDING THAT THAT
15 WEBSITE LISTED AT THE BOTTOM IS WHERE THEY OBTAINED IT?

16 PROBATION OFFICER WOLFE: THAT'S CORRECT.

17 THE COURT: THAT'S A PORTAL, AS I UNDERSTAND
18 IT, THAT ONLY CERTAIN PEOPLE CAN ACCESS?

19 PROBATION OFFICER WOLFE: IT'S A DATA BASE THEY
20 HAVE ACCESS TO, JUDGE, MY UNDERSTANDING, BUT I DON'T KNOW
21 AS FAR AS WHO HAS ACCESS TO IT, WHO HAS IT, WHO CAN'T; BUT
22 THEY RELY ON IT TO SUPPORT THEIR REPORTS FOR POINTS AND
23 CALCULATIONS AND THINGS SUCH AS THAT NATURE.

24 THE COURT: DID YOU ASK MR. SUERO TO SIGN A
25 RELEASE SO --

1 PROBATION OFFICER WOLFE: I DID.

2 THE COURT: AND DID HE SIGN IT?

3 PROBATION OFFICER WOLFE: HE DID.

4 THE COURT: WHAT HAPPENED WHEN YOU SUBMITTED
5 THAT TO THE COURT?

6 PROBATION OFFICER WOLFE: THE CLERK'S OFFICE
7 WOULD NOT RECOGNIZE THAT IN NEW YORK. THEY SAID THAT
8 WASN'T GOOD. IT WAS GOING TO HAVE TO BE AN AFFIDAVIT THAT
9 WAS GOING TO BE SIGNED BY A JUDGE TO -- THEN THAT
10 DOCUMENT, THAT AFFIDAVIT WOULD BE, MY UNDERSTANDING,
11 PROVIDED TO EITHER ANOTHER JUDGE OR THE CLERK'S OFFICE, I
12 CAN'T REMEMBER EXACTLY, TO HAVE THE CASE UNSEALED. THEY
13 WERE SHUT DOWN, THE PROBATION OFFICE WAS, AND I WAS. THEY
14 WOULD NOT RECOGNIZE THAT SIGNED RELEASE FORM BY MR. SUERO,
15 THEY WOULDN'T JUSTIFY THAT TO UNSEAL THE CASE.

16 THE COURT: DID YOU DO AN NCIC RECORDS CHECK?

17 PROBATION OFFICER WOLFE: YES.

18 THE COURT: DOES IT SHOW THIS NEW YORK
19 ADJUDICATION.

20 PROBATION OFFICER WOLFE: JUDGE, IT'S NOT
21 REFLECTED ON THIS NCIC.

22 THE COURT: ALL RIGHT. DOES ANYBODY SEE ANY
23 NEED FOR ME TO SWEAR MR. WOLFE? CAN WE STIPULATE THAT
24 WOULD BE HIS TESTIMONY?

25 MR. STAMBAUGH: YES, YOUR HONOR; YES, YOUR

1 HONOR.

2 MR. BOWMAN: YES, YOUR HONOR. ALTHOUGH I GUESS
3 MAYBE I'M STIRRING IT, JUDGE, BUT I'M CURIOUS BASED UPON
4 THE FACT THAT IT'S NOT IN NCIC AS TO HOW MR. WOLFE CAME TO
5 LIST THAT ADJUDICATION IN THE ORIGINAL PSR. I GUESS
6 THE -- I GUESS AM I TO UNDERSTAND THE PORTAL DOCUMENTS
7 WERE RECEIVED BEFORE THE PSR WAS PREPARED?

8 PROBATION OFFICER WOLFE: CAN I LOOK AT THE
9 FILE AND SEE IF THERE WAS A PRETRIAL REPORT?

10 THE COURT: YES, YOU MAY.

11 PROBATION OFFICER WOLFE: I DON'T KNOW, TO BE
12 HONEST, MR. BOWMAN.

13 MR. BOWMAN: I'M SORRY TO PUT YOU ON THE SPOT.

14 PROBATION OFFICER WOLFE: NO, THAT'S FINE.

15 JUDGE, IT APPEARS THAT MR. SUERO WAS ARRESTED
16 IN THE DISTRICT OF VERMONT.

17 THE COURT: YES.

18 PROBATION OFFICER WOLFE: AND ON THAT PAR-
19 TICULAR REPORT CONTAINED IN THE PRETRIAL REPORT WAS THAT
20 PARTICULAR CONVICTION, SO I BELIEVE THAT'S WHAT RAISED MY
21 SUSPICION OR INQUIRY TO FURTHER DETERMINE WHAT WAS GOING
22 ON WITH THAT CONVICTION AND BASED ON THE DISTRICT OF
23 VERMONT'S INVESTIGATION, AND I CANNOT TELL YOU EXACTLY HOW
24 THEY UNCOVERED IT.

25 THE COURT: IN THIS DISTRICT YOU USE NCIC FOR

1 THOSE REPORTS; DON'T YOU?

2 PROBATION OFFICER WOLFE: YES, THAT'S SOMETHING
3 WE RELY ON TO GIVE US GUIDANCE FOR CONVICTIONS THAT WE MAY
4 NOT KNOW ABOUT. NOW, YOU KNOW, NCIC IS ONLY AS GOOD AS
5 THE PERSON WHO ENTERS IT, SO I DON'T KNOW WHY IT WOULD NOT
6 BE IN THERE, BUT THE PRETRIAL REPORT FROM THE DISTRICT OF
7 VERMONT IS WHERE I OBTAINED THAT CONVICTION.

8 THE COURT: BUT IT IS CURIOUS THAT IT DOESN'T
9 APPEAR ON THE NCIC REPORT. IT'S EVEN MORE CURIOUS IN
10 LIGHT OF THE FACT THAT THERE APPEARS TO BE AN NCIC NUMBER
11 ON THIS OTHER DOCUMENT, THE PORTAL DOCUMENT.

12 PROBATION OFFICER WOLFE: YOUR HONOR, I DON'T
13 KNOW OTHER THAN -- I'M SORRY, THE NCIC I HAVE DOES NOT
14 REFLECT THAT. IN THE PRETRIAL REPORT IT CONTAINS A DOCKET
15 NUMBER AND REFERENCES THE BRONX COUNTY CRIMINAL COURT AND
16 IT WAS TRANSFERRED TO THE BRONX COUNTY SUPREME COURT; BUT,
17 I DON'T KNOW, I APOLOGIZE, I JUST DON'T HAVE AN ANSWER AS
18 TO THE QUESTION.

19 THE COURT: THAT'S FINE. WE HAVE WHAT WE HAVE.
20 DID WE DRAG YOU IN OUT OF THE FIELD?

21 PROBATION OFFICER WOLFE: WELL, NO, THAT'S
22 FINE -- YEAH, I APOLOGIZE FOR THE WAY I'M DRESSED. YEAH,
23 I WAS OUT, YES, I WAS DOING SOME WORK OUTSIDE THE COURT, I
24 APOLOGIZE.

25 THE COURT: ALL RIGHT. THANK YOU, MR. WOLFE.

1 PROBATION OFFICER WOLFE: YES, SIR.

2 THE COURT: ALL RIGHT. NOW, MR. SUERO, COME UP
3 TO THE PODIUM WITH YOUR ATTORNEY, PLEASE.

4 IS THERE ANYTHING YOU WISH TO SAY TO THE COURT
5 THIS AFTERNOON BEFORE I IMPOSE SENTENCE IN THIS CASE?

6 THE DEFENDANT: YES.

7 THE COURT: ALL RIGHT. GO AHEAD.

8 THE DEFENDANT: ALL RIGHT. I WANT TO APOLOGIZE
9 TO THE COMMUNITY AND TO THE COURTS. I UNDERSTAND HOW WHAT
10 I DID WAS WRONG, AND I UNDERSTAND THE CONSEQUENCES. I WAS
11 STARTING TO GET MY LIFE TOGETHER PRIOR TO THESE CHARGES,
12 BUT, UNFORTUNATELY, MY PAST CAUGHT UP WITH ME. I HAVE TWO
13 BOYS, TWO YOUNG BOYS, I MISS THEM DEARLY, AND I WANT TO
14 APOLOGIZE TO THEM. I JUST ASK THAT YOU BE LENIENT WITH
15 ME, THAT'S IT. THANK YOU.

16 THE COURT: ALL RIGHT. MR. SUERO, SENTENCING
17 IS NEVER SOMETHING I LOOK FORWARD TO IN A CRIMINAL CASE,
18 AND I'VE NEVER TAKE -- I'VE NEVER LEFT THE COURTROOM AFTER
19 A CRIMINAL SENTENCING FEELING ANY KIND OF PLEASURE ABOUT
20 THE SENTENCE THAT WAS IMPOSED. SENTENCING BECOMES PAR-
21 TICULARLY HARD WHEN I'M DEALING WITH A 23 YEAR OLD
22 DEFENDANT, AND YOU ARE THE SECOND 23 YEAR OLD DEFENDANT
23 I'VE SEEN TODAY.

24 WHAT I'M REQUIRED TO DO HERE THIS AFTERNOON IS
25 TO IMPOSE A SENTENCE WHICH IS SUFFICIENT BUT NOT GREATER

1 THAN NECESSARY. IF YOU READ THE STATUTE, TITLE 18, UNITED
2 STATES CODE, SECTION 3553(A), CONGRESS JUST SORT OF MATTER
3 OF FACTLY LISTS A NUMBER OF FACTORS THAT THE COURT MUST
4 CONSIDER IN DETERMINING WHAT SENTENCE IS SUFFICIENT BUT
5 NOT GREATER THAN NECESSARY.

6 THE FIRST ONE IS THE ADVISORY GUIDELINE RANGE.
7 BECAUSE OF MY RULING ON YOUR OBJECTION, YOU HAVE AN
8 ADVISORY GUIDELINE RANGE OF 70 TO 87 MONTHS. IF I HAD
9 SUSTAINED YOUR OBJECTION, YOU WOULD HAVE HAD AN ADVISORY
10 RANGE OF 63 TO 78 MONTHS, SOME OVERLAP BETWEEN THE TWO,
11 TWO RANGES.

12 NOW, I REFER TO THAT RANGE AS ADVISORY BECAUSE
13 I'M NOT REQUIRED TO SENTENCE YOU WITHIN THAT RANGE. I
14 HAVE DISCRETION TO VARY BELOW THAT RANGE, BUT NO FURTHER
15 THAN THE MANDATORY MINIMUM SENTENCE WHICH APPLIES TO THE
16 CASE. IN OTHER WORDS, I HAVE NO AUTHORITY TO SENTENCE YOU
17 TO ANYTHING LESS THAN 60 MONTHS, 5 YEARS. CONGRESS HAS
18 TAKEN AWAY MY DISCRETION TO DO THAT. ON THE OTHER HAND, I
19 HAVE THE DISCRETION TO VARY ABOVE THE GUIDELINE RANGE ALL
20 THE WAY UP TO 40 YEARS. THE GOVERNMENT DOESN'T ARGUE FOR
21 THAT, AND, INDEED, IT DOES NOT APPEAR TO ME TO BE A FACTOR
22 HERE WHICH RAISES A SIGNIFICANT ARGUMENT THAT THERE OUGHT
23 TO BE AN ABOVE-GUIDELINE RANGE SENTENCE.

24 THIS RANGE IS IMPORTANT BECAUSE IT IS THE
25 RESULT OF NEARLY 30 YEARS OF WORK BY THE UNITED STATES

1 SENTENCING COMMISSION. THE SENTENCING COMMISSION HAS
2 ESTABLISHED THIS RANGE. IT'S DONE SO AFTER A MANDATE FROM
3 CONGRESS THAT IT CONSIDER ALL THE 3553(A) FACTORS.
4 EVERYTHING IN MY EXPERIENCE, AND MY EXPERIENCE GOES ALL
5 THE WAY BACK TO THE TIME WHEN THE GUIDELINES WERE FIRST
6 ISSUED, SUGGESTS TO ME THAT THE SENTENCING COMMISSION HAS
7 DONE WHAT CONGRESS TOLD IT TO, AND IT HAS IN FACT ESTAB-
8 LISHED GUIDELINE RANGES IN MOST CASES WHICH ARE
9 REPRESENTATIVE OR REFLECTIVE OF ALL THE 3553(A) FACTORS.
10 SO ALTHOUGH MY DISCRETION RANGES FROM A SENTENCE OF 5
11 YEARS AT THE BOTTOM TO A 40 YEAR TERM AT THE TOP, THAT
12 GUIDELINE RANGE BECAUSE IT IS GENERALLY REFLECTIVE OF THE
13 3553(A) FACTORS GIVES ME A STRONG SUGGESTION OF WHERE
14 WITHIN THE STATUTORY RANGE I SHOULD IMPOSE SENTENCE. IN
15 OTHER WORDS, WHERE WITHIN THE STATUTORY RANGE A SENTENCE
16 SUFFICIENT BUT NOT GREATER THAN NECESSARY CAN BE FOUND.

17 THE ONLY OBJECTION THAT'S BEEN RAISED IN CASES
18 INVOLVING CRACK COCAINE IS THAT THE GUIDELINE RANGE
19 REFLECTS SOME DISPARITY BETWEEN THE TREATMENT OF POWDER
20 COCAINE UNDER THE GUIDELINES AND THE TREATMENT OF CRACK
21 COCAINE, AND THAT'S TRUE. AT ONE TIME THERE WAS A 100 TO
22 1 RATIO, IN OTHER WORDS, CRACK COCAINE OFFENSES WERE
23 TREATED 100 TIMES MORE HARSHLY THAN WERE POWDER COCAINE
24 OFFENSES. THAT DISPARITY IS LARGELY GONE AT THIS POINT
25 BECAUSE JUST A FEW YEARS AGO CONGRESS TOOK ACTION; BUT

1 CONGRESS DIDN'T MAKE THE RATIO 1 TO 1, THERE'S STILL SOME
2 DISPARITY THERE, I BELIEVE IT'S BEEN 18 TO 1; AND THERE'S
3 STILL AN ARGUMENT THAT SOMETIMES IS MADE THAT THAT
4 DISPARITY CARRIES OVER INTO THE GUIDELINES AND MAKES THE
5 GUIDELINES AN UNRELIABLE INDICATOR OF WHAT SENTENCE IS
6 SUFFICIENT BUT NOT GREATER THAN NECESSARY, BUT I GENERALLY
7 HAVE NOT ACCEPTED THAT ARGUMENT SIMPLY BECAUSE IT'S ONLY
8 BEEN NOW A VERY FEW YEARS SINCE CONGRESS WEIGHED IN ON THE
9 ISSUE. CONGRESS AT THAT TIME FELT THAT THE 18 TO 1 RATIO
10 WAS APPROPRIATE. INDEED, IT WAS SUGGESTED THAT THERE WERE
11 SOME VALID SUBSTANTIVE REASONS FOR THAT DISPARITY. FOR
12 WHATEVER REASON THE STATISTICS INDICATE THAT FIREARMS ARE
13 MORE OFTEN POSSESSED BY CRACK COCAINE DEALERS THAN BY
14 POWDER COCAINE DEALERS. I'M NOT SURE WHY THAT STATISTIC
15 EXISTS, BUT IT DOES; AND SOME PEOPLE STILL SUGGEST THAT
16 CRACK COCAINE IS MORE HIGHLY ADDICTIVE THAN POWDER
17 COCAINE. I DON'T KNOW WHAT THE SCIENCE SHOWS IN THAT
18 RESPECT. I DO KNOW THAT I HAVE SEEN MANY, MANY DEFENDANTS
19 OVER THE YEARS WHO HAVE STOOD THERE BEHIND THAT PODIUM AND
20 TOLD ME THAT AFTER THEY USED CRACK COCAINE ONE TIME, THEY
21 WERE JUST SIMPLY HOOKED.

22 NOW, YOU DIDN'T REPORT THE USE OF ANY CRACK
23 COCAINE. IN FACT, THE ONLY THING YOU REPORTED WAS SOME
24 USE OF MARIJUANA.

25 THE DEFENDANT: YES.

1 THE COURT: IT DOESN'T APPEAR THAT YOU WERE A
2 REGULAR MARIJUANA USER NECESSARILY, BUT YOU CERTAINLY HAD
3 USED MARIJUANA FROM THE TIME YOU WERE 16.

4 THE DEFENDANT: YES.

5 THE COURT: SO I BASICALLY, AND GENERALLY
6 SPEAKING, DON'T FIND THE EXISTING DISPARITY BETWEEN THE
7 TREATMENT OF CRACK COCAINE AND POWDER COCAINE TO REFLECT
8 SOME INADEQUACY IN THE GUIDELINE RANGE FOR THE REASONS --
9 FOR THE REASON THAT CONGRESS ESTABLISHED THAT RATIO VERY
10 RECENTLY AND BECAUSE THERE ARE AT LEAST ANECDOTALLY
11 REASONS WHY THERE SHOULD IN FACT BE SOME DISPARITY IN
12 TREATMENT, BUT, GENERALLY SPEAKING, THE RANGE IS
13 REFLECTIVE OF THE OTHER 3553(A) FACTORS; BUT BECAUSE IT'S
14 ADVISORY, I HAVE TO CONSIDER THESE OTHER FACTORS, CONSIDER
15 WHETHER THERE'S ONE OR MORE OF THESE FACTORS OR SEVERAL IN
16 COMBINATION THAT ARE NOT REFLECTED IN THE GUIDELINE RANGE.

17 I BEGIN BY LOOKING TO, FIRST OF ALL, THE
18 SERIOUSNESS OF THE OFFENSE. WHETHER I CONSIDER YOU A
19 MAJOR PARTICIPANT OR NOT A MAJOR PARTICIPANT IN THIS
20 CONSPIRACY, THE SIMPLE FACT OF THE MATTER REMAINS THAT A
21 CONSPIRACY TO DISTRIBUTE CRACK COCAINE IS SERIOUS BECAUSE
22 WHETHER IT'S MORE ADDICTIVE THAN POWDER COCAINE OR NOT, IT
23 IS CLEARLY AN ADDICTIVE SUBSTANCE. IT'S A DANGEROUS
24 SUBSTANCE. IT WRECKS FAMILIES, IT WRECKS LIVES, IT WRECKS
25 COMMUNITIES, AND SO IT'S A SERIOUS OFFENSE. AND WHETHER,

1 AGAIN, WHETHER I FIND THAT YOU ARE A MAJOR OR NOT A MAJOR
2 PARTICIPANT, IT'S CLEAR THAT YOUR PARTICIPATION HERE WAS
3 SUBSTANTIAL. THAT'S PROBABLY THE BEST WORD I CAN USE FOR
4 IT.

5 AND YOU MIGHT, AS MR. BOWMAN SUGGESTED, IF YOU
6 HAD TAKEN THIS CASE TO TRIAL, HAVE BEEN CONVICTED OF A
7 CONSPIRACY INVOLVING 280 GRAMS OF CRACK COCAINE, WHICH
8 WOULD HAVE MADE YOU SUBJECT TO THE 10 YEAR MANDATORY
9 MINIMUM. SO IN SOME WAYS YOU HAVE RECEIVED SIGNIFICANT
10 BENEFIT HERE BY THE GOVERNMENT'S AGREEMENT TO ALLOW YOU TO
11 PLEAD GUILTY TO A LESSER INCLUDED OFFENSE; BUT IT'S A
12 SERIOUS OFFENSE, IT'S A DANGEROUS OFFENSE.

13 I HAVE TO ALSO LOOK AT THE NEED FOR THE
14 SENTENCE IMPOSED TO PROMOTE RESPECT FOR THE LAW.
15 MR. SUERO, I AM BOTHERED CONSIDERABLY BY YOUR CRIMINAL
16 HISTORY HERE. I HEARD YOU SAY THAT PRIOR TO THE COM-
17 MISSION OF THIS OFFENSE YOU WERE TRYING TO GET YOUR LIFE
18 BACK ON TRACK, GET YOUR LIFE TOGETHER, AND I HOPE YOU CAN
19 ULTIMATELY DO THAT; BUT THE SIMPLE FACT OF THE MATTER IS
20 THAT YOUR CRIMINAL RECORD FOR A VERY YOUNG MAN IS, IS VERY
21 SIGNIFICANT, BEGINNING WITH A FIRST DEGREE ROBBERY WHEN
22 YOU WERE 15 YEARS OF AGE. THAT'S THE CONVICTION WE'VE
23 BEEN TALKING ABOUT HERE FOR A GOOD PART OF THE AFTERNOON,
24 WHICH APPARENTLY, ACCORDING TO THE PRESENTENCE REPORT
25 INVOLVING, INVOLVED AN INCIDENT WHERE YOU STRUCK THE

1 VICTIM IN THE FACE WITH THE BARREL OF A PISTOL. THEN, OF
2 COURSE, THERE WAS THE AGGRAVATED HARASSMENT OF AN EMPLOYEE
3 CONVICTION THAT APPARENTLY OCCURRED WHILE YOU WERE IN THE
4 JUVENILE FACILITY; AND THEN YOUR FIRST ADULT CONVICTION AT
5 THE AGE OF 18, WHICH INVOLVED ULTIMATELY DISORDERLY
6 CONDUCT CHARGED WITH RESISTING ARREST AND SECOND DEGREE
7 HARASSMENT, THOSE CHARGES DISMISSED, BUT FOUND GUILTY OF
8 DISORDERLY CONDUCT. AND THE EXPLANATION OF THAT CHARGE
9 INDICATES THAT YOU WERE -- THAT AN OFFICER ATTEMPTED TO
10 ARREST YOU, AND THAT YOU DID IN FACT RESIST THAT ARREST,
11 PUSHED THE OFFICER IN THE CHEST, REFUSED TO ENTER YOUR
12 CELL, FLAILED ARMS, KICKED LEGS, TWISTED BODY, REFUSING TO
13 HANDCUFFED AND SO ON. THEN AT AGE 20 CONVICTED OF
14 POSSESSION OF A RIFLE OR SHOTGUN IN PUBLIC, RESISTING
15 ARREST, OF KILLING OR INJURING A POLICE DOG AND A FALSE
16 IMPERSONATION; AND THEN IN THAT SAME YEAR, JUST TWO MONTHS
17 LATER, CONVICTED OF CRIMINAL TRESPASSING AND ESCAPE THIRD
18 DEGREE WITH ANOTHER ASSAULT CHARGE DISMISSED AS WELL AS
19 ANOTHER RESISTING ARREST CHARGE -- WELL, LET ME BACK UP.
20 I SAID THAT WRONG. YOUR CONVICTIONS WERE FOR CRIMINAL
21 TRESPASSING AND RESISTING ARREST. THE ESCAPE WAS DIS-
22 MISSED ALONG WITH THE CRIMINAL MISCHIEF AND THIRD DEGREE
23 ASSAULT. AND THEN, OF COURSE, THE COMMISSION OF THIS
24 OFFENSE, A RATHER DISTURBING, SOMEWHAT PROFOUND RECORD FOR
25 A MAN YOUR AGE.

1 I CAN'T HELP BUT AGREE WITH THE GOVERNMENT'S
2 CHARACTERIZATION THAT YOUR CRIMINAL HISTORY IS IN FACT A
3 VIOLENT HISTORY. THIS CAN'T CONTINUE, MR. SUERO. I MEAN,
4 IF THIS KIND OF CONDUCT DOES CONTINUE, YOU'RE GOING TO END
5 UP IN PRISON FOR A LONG, LONG TIME, OR YOU'RE GOING TO BE
6 KILLED DURING ONE OF THESE ALTERCATIONS. AND THAT RECORD
7 DOES IN FACT SUGGEST TO ME THAT THERE IS A RATHER SERIOUS
8 NEED HERE FOR THE COURT TO IMPOSE A SENTENCE THAT WILL
9 PROMOTE RESPECT FOR THE LAW.

10 THAT ALSO IMPLICATES THE NEED TO PROTECT THE
11 PUBLIC HERE. EVERY OFFENSE THAT YOU HAVE COMMITTED HAS
12 HAD AN ELEMENT OF VIOLENCE OR SERIOUS RISK TO THE
13 COMMUNITY. THE PUBLIC HAS A RIGHT TO BE PROTECTED FROM
14 THAT. MR. SUERO, WHILE YOU'RE A YOUNG MAN, THIS KIND OF
15 CONDUCT IS JUST NOT GOING TO BE TOLERATED WHETHER IT
16 OCCURS IN TENNESSEE OR NEW YORK OR SOME OTHER STATE. THE
17 PUBLIC HAS A RIGHT TO BE PROTECTED FROM THAT.

18 I ALSO HAVE TO CONSIDER HERE THE NEED FOR AN
19 ADEQUATE DETERRENCE. I CONSIDER BOTH GENERAL DETERRENCE
20 AND SPECIFIC DETERRENCE. THE FIRST QUESTION BEING WHAT
21 SENTENCE IS NECESSARY TO DETER YOU FROM FURTHER CRIMINAL
22 CONDUCT. GIVEN A CRIMINAL RECORD THAT GOES BACK TO THE
23 AGE OF 15 AND THAT HAS IN SOME WAYS ESCALATED OVER THE
24 LAST FEW YEARS, THERE CERTAINLY IS A NEED TO SPECIFICALLY
25 DETER YOU FROM FURTHER CRIMINAL CONDUCT. I'VE HEARD YOUR

1 PLEA FOR LENIENCY HERE, BUT, UNFORTUNATELY, IN SOME CASES
2 A LENIENT SENTENCE SENDS JUST THE OPPOSITE MESSAGE. YOU
3 KNOW, I'M BIG ON SECOND CHANCES, I CERTAINLY AM BIG ON
4 GIVING YOUTHFUL OFFENDERS A BREAK. I'M CONCERNED, HOW-
5 EVER, THAT THAT'S HAPPENED SEVERAL TIMES IN YOUR YOUNG
6 LIFE ALREADY AND THAT THERE HAS TO BE A SIGNIFICANT
7 SENTENCE HERE TO DETER YOU SPECIFICALLY.

8 GENERAL DETERRENCE CLEARLY IS A FACTOR HERE. I
9 DON'T KNOW HOW MANY OF THESE CASES I'VE NOW DEALT WITH
10 WHERE CRACK COCAINE WAS INTRODUCED INTO THIS DISTRICT FROM
11 NEW YORK AND SOLD HERE AND DISTRIBUTED HERE IN THIS
12 DISTRICT. I'VE HAD SEVERAL CASES WHERE PEOPLE HAVE SUG-
13 GESTED TO ME THAT IT SELLS FOR A MUCH LOWER PRICE IN NEW
14 YORK CITY, IT SELLS FOR A MUCH LOWER PRICE IN PLACES LIKE
15 ATLANTA, AND THEN BECAUSE IT SELLS AT A HIGHER PRICE IN
16 THE EASTERN DISTRICT OF TENNESSEE MAKES THIS DISTRICT AN
17 ATTRACTIVE PLACE FOR PEOPLE TO BRING CRACK COCAINE. SO
18 IT'S CLEAR TO ME THAT THERE HAS TO BE A GENERAL DETERRENT
19 EFFECT HERE.

20 BEYOND THAT, I HAVE TO LOOK AT THE NATURE AND
21 CIRCUMSTANCES OF YOUR INVOLVEMENT IN THIS OFFENSE.
22 CLEARLY YOU WERE NEITHER THE MOST CULPABLE NOR THE LEAST
23 CULPABLE IN THIS CONSPIRACY. YOU WERE NOT A MINOR OR A
24 MINIMAL PARTICIPANT. YOUR PARTICIPATION WAS IN FACT
25 SIGNIFICANT, AS I JUST SAID.

1 THAT LEAVES ME TO CONSIDER YOUR PERSONAL
2 HISTORY AND CHARACTERISTICS. I'VE TALKED ABOUT YOUR
3 CRIMINAL HISTORY HERE. I'VE TALKED A LITTLE BIT ABOUT
4 YOUR AGE, AND, FRANKLY, IT'S DISTURBING TO ME ANY TIME I
5 SEE A YOUNG DEFENDANT, ESPECIALLY ONE IN HIS EARLY
6 TWENTIES, AND CERTAINLY I AM GENERALLY OPEN TO THE IDEA
7 THAT VERY YOUTHFUL OFFENDERS OUGHT TO GET ANOTHER CHANCE.
8 THE PROBLEM HERE IS, MR. SUERO, YOU'VE TAKEN ADVANTAGE OF
9 THAT MORE THAN ONE TIME. I MEAN, IT WAS AFTER ALL A
10 YOUTHFUL OFFENDER ADJUDICATION ON THAT ROBBERY CONVICTION.
11 YOU SIMPLY CAN'T CONTINUE TO COMMIT THESE CRIMES, NO
12 MATTER WHAT YOUR AGE; BUT, NEVERTHELESS, I NOTE YOUR YOUNG
13 AGE.

14 AND I NOTE THE FACT THAT YOU HAVE THESE TWO
15 YOUNG CHILDREN, ONE THREE YEARS OLD, ONE THREE MONTHS OLD,
16 AS OF THE TIME THE PRESENTENCE REPORT WAS PREPARED, BUT
17 VERY YOUNG CHILDREN. YOU'VE TOLD ME THAT YOU MISS THOSE
18 CHILDREN EARLY, I DON'T DOUBT THAT A BIT. AT AGE 23 WITH
19 TWO CHILDREN, YOU OUGHT TO BE WITH THOSE CHILDREN, AND YOU
20 OUGHT TO BE SETTING A GOOD EXAMPLE FOR THOSE CHILDREN.
21 THOSE CHILDREN ARE IN MANY WAYS VICTIMS HERE, MR. SUERO.
22 THEY'VE BEEN VICTIMIZED BY YOUR CONDUCT. THEY'RE NOT
23 GOING TO HAVE A DAY-TO-DAY RELATIONSHIP WITH THEIR FATHER
24 FOR AT LEAST 5 YEARS BECAUSE OF THE DECISIONS THAT YOU
25 HAVE MADE.

1 I SUPPOSE WHEN YOUR PRISON SENTENCE IS COM-
2 PLETED HERE, YOU'VE GOT SOME MAKING UP TO DO WITH THOSE
3 CHILDREN; AND THE BEST THING YOU CAN DO FOR THEM,
4 MR. SUERO, IS TO GIVE THEM A PROPER EXAMPLE, TEACH THEM
5 HOW TO BE YOUNG MEN AND ADULT MEN WHO ARE PRODUCTIVE PARTS
6 OF SOCIETY; NOT DEALING DRUGS, NOT COMMITTING VIOLENT
7 OFFENSES, NOT RESISTING AUTHORITY AND RESISTING POLICE.
8 THE SILVER LINING IS THAT YOU'VE GOT SOME TIME TO DO THAT.
9 DURING THE TIME THAT YOU'RE ABSENT, YOU NEED TO TEACH
10 THESE CHILDREN -- THE OLDER ONE IS SOON GOING TO BE ASKING
11 QUESTIONS, IF HE'S NOT ALREADY, ABOUT WHERE HIS FATHER IS
12 AND WHY HE'S WHERE HE IS, AND YOU HAVE TO BE VERY CAREFUL
13 ABOUT ANSWERING THOSE QUESTIONS; BUT YOU NEED TO MAKE THAT
14 YOUNG MAN UNDERSTAND, AND YOU NEED TO MAKE THE YOUNGER ONE
15 UNDERSTAND WHEN HE STARTS ASKING THOSE QUESTIONS TOO, THAT
16 IF YOU MAKE THESE BAD CHOICES IN LIFE, THERE ARE BAD
17 CONSEQUENCES.

18 AND I'LL TELL YOU SOMETHING, MR. SUERO, YOU CAN
19 TELL THEM ALL YOU WANT TO ABOUT MAKING BAD DECISIONS; BUT
20 IF YOU CONTINUE TO MAKE THOSE BAD DECISIONS YOURSELF, THE
21 ODDS ARE THEY WILL BEGIN TO MAKE THOSE BAD DECISIONS AS
22 WELL. YOU KNOW, SOMETIMES ADULTS HAVE A HABIT OF TELLING
23 CHILDREN TO DO AS THEY SAY, NOT AS THEY DO, AND THAT'S THE
24 MOST NONSENSICAL THING I'VE EVER HEARD BECAUSE THEY'LL DO
25 JUST EXACTLY WHAT THEIR PARENTS DO. THEY WILL MIMIC YOUR

1 BEHAVIOR. AND I'M VERY SYMPATHETIC TO THE PLIGHT OF THESE
2 CHILDREN AT THIS POINT, BUT I'M ALSO MINDFUL OF THE FACT
3 THAT NEITHER THE GOVERNMENT NOR THE COURT PUTS THOSE
4 CHILDREN IN THAT POSITION.

5 WHAT I HAVE TO DO, MR. SUERO, IS TAKE ALL THAT
6 AND BALANCE THOSE FACTORS ONE AGAINST ANOTHER AND DETER-
7 MINE THEN WHAT SENTENCE IS SUFFICIENT BUT NOT GREATER THAN
8 NECESSARY. MR. BOWMAN ASKS ME TO SENTENCE IN THE UPPER
9 HALF OF THE GUIDELINE RANGE, AND CERTAINLY THE GOVERNMENT
10 HAS A LEGITIMATE ARGUMENT ABOUT THAT GIVEN YOUR VIOLENT
11 HISTORY, GIVEN THE BENEFITS YOU'VE ALREADY GOTTEN FROM
12 THIS PLEA AGREEMENT, GIVEN THE BENEFIT THAT YOU'D GOTTEN
13 PREVIOUSLY BASED ON YOUR YOUTHFUL STATUS. MR. STAMBAUGH
14 ASKS ME TO CONSIDER A SENTENCE AT THE BOTTOM OF THE
15 GUIDELINE RANGE BECAUSE YOU'RE A YOUNG MAN, BECAUSE THERE
16 ARE TWO MINOR CHILDREN; AND I GUESS IMPLICIT IN WHAT HE'S
17 TOLD ME IS THAT BECAUSE YOU'RE A CITIZEN OF THE DOMINICAN
18 REPUBLIC, YOU COULD FACE DEPORTATION EVENTUALLY IF YOU
19 CONTINUE. I DON'T THINK THERE IS AN ICE DETAINER HERE. I
20 DON'T KNOW WHAT YOUR STATUS IS IN THIS COUNTRY, BUT YOU
21 CERTAINLY BY COMMITTING FELONY OFFENSES RISK BEING
22 DEPORTED FROM THE COUNTRY. AND THAT IS, OF COURSE, A
23 COLLATERAL CONSEQUENCE OF YOUR CONVICTION IN THIS CASE,
24 AND MAYBE OTHER CASES AS WELL; BUT I THINK ALL OF THOSE
25 ADULT CASES WERE PROBABLY MISDEMEANOR CASES.

1 FIRST OF ALL, MR. SUERO, I FIND THAT NEITHER A
2 SENTENCE AT THE BOTTOM OF THE GUIDELINE RANGE NOR THE TOP
3 OF THE GUIDELINE RANGE IS APPROPRIATE IN THIS CASE BECAUSE
4 YOU ARE A REPEAT OFFENDER. BECAUSE YOU HAVE COMMITTED
5 VIOLENT OFFENSES, BECAUSE THE OFFENSE COMMITTED HERE IS A
6 SERIOUS OFFENSE, BECAUSE OF THE NEED FOR BOTH SPECIFIC AND
7 GENERAL DETERRENCE, A BOTTOM OF THE GUIDELINE RANGE
8 SENTENCE SIMPLY WOULD NOT BE APPROPRIATE HERE.

9 WE SPENT A LOT OF TIME THIS AFTERNOON ON THIS
10 ISSUE OF WHETHER OR NOT THAT NEW YORK ADJUDICATION, YOUTH-
11 FUL OFFENDER ADJUDICATION, OUGHT TO RESULT IN CRIMINAL
12 HISTORY POINTS. IF I HAD SUSTAINED YOUR OBJECTION, AS I
13 SAID EARLIER, YOU WOULD HAVE BECOME A CRIMINAL HISTORY
14 CATEGORY 2 WITH A GUIDELINE RANGE OF 63 TO 78 MONTHS.

15 WHAT I'M GOING TO DO HERE, MR. SUERO, IS IMPOSE
16 A SENTENCE OF 78 MONTHS BECAUSE I FIND THAT THAT IS THE
17 SENTENCE THAT IS SUFFICIENT BUT NOT GREATER THAN NECESSARY
18 IN THIS CASE, AND I FIND THAT REGARDLESS OF WHAT YOUR
19 CRIMINAL HISTORY CATEGORY WOULD HAVE BEEN. IT'S A
20 SENTENCE THAT WOULD HAVE BEEN AT THE TOP OF THE OTHERWISE
21 APPLICABLE GUIDELINE RANGE, IT'S IN THE MIDDLE OF THE ONE
22 I FOUND APPLIED, SO IT'S IN EITHER GUIDELINE RANGE. AND
23 EVEN IF I GOT THE GUIDELINE RANGE HERE WRONG, I FIND THAT
24 THAT 78 MONTH SENTENCE IS SUFFICIENT BUT NOT GREATER THAN
25 NECESSARY AND CLEARLY WARRANTED BY THE CIRCUMSTANCES IN

1 THIS CASE.

2 CERTAINLY I WOULD NOT BE REVERSED IF I HAD GONE
3 FURTHER NEAR THE TOP OF THE 70 TO 87 MONTH GUIDELINE
4 RANGE; BUT I WANT TO GIVE YOU THE BENEFIT OF THE DOUBT,
5 AND I DO THAT LARGELY BECAUSE OF YOUR AGE. PLEASE UNDER-
6 STAND, MR. SUERO, HOWEVER, THAT YOU CANNOT CONTINUE TO
7 RELY ON YOUR AGE AS A MITIGATING FACTOR. THERE'S JUST TOO
8 MANY CRIMINAL CONVICTIONS HERE NOW. NOR CAN YOU RELY ON
9 THE FACT THAT YOU WERE A DISADVANTAGED YOUTH. I'VE NEVER
10 QUITE UNDERSTOOD THE ARGUMENT THAT BEING A DISADVANTAGED
11 YOUTH CAUSES ONE TO MAKE BAD DECISIONS. YOU HAVE AN
12 INHERENT SENSE OF WHAT IS RIGHT AND WHAT IS WRONG. YOUR
13 BACKGROUND DOESN'T CHANGE THAT. YOU KNOW WHEN YOU COMMIT
14 A ROBBERY OR AN ASSAULT OR RESIST AN OFFICER OR DISTRIBUTE
15 DRUGS THAT THOSE ARE ALL WRONG.

16 I'LL TELL YOU ONE OTHER THING, MR. SUERO, I GOT
17 THIS LETTER FROM YOUR FIANCEE. SHE TELLS ME THAT SHE
18 WANTS TO MARRY YOU, THAT YOU HAVE BROUGHT ABOUT A CHANGE
19 IN HER LIFE. I HOPE THAT'S CORRECT. I'M NOT SURE QUITE
20 HOW THAT HAS OCCURRED, BUT, NEVERTHELESS, SHE APPEARS TO
21 BE PREPARED TO STAND BY YOU. TIME WILL TELL, I GUESS.
22 AND I HOPE ALL OF THIS IS NOT SHOW FOR SOME REALITY
23 TELEVISION SHOW; BUT I'VE READ HER LETTER, WHICH WAS JUST
24 RECEIVED, AND IF WHAT SHE TELLS ME IS TRUE, AND IF SHE IN
25 FACT IS WILLING TO WAIT FOR YOU TO CONTINUE THE, THE

1 RELATIONSHIP, THEN THAT BRINGS SOME, SOME DEGREE OF
2 STABILITY INTO YOUR LIFE THAT'S OTHERWISE NOT THERE.

3 SO, MR. SUERO, AFTER HAVING CONSIDERED THE
4 NATURE AND CIRCUMSTANCES OF THIS OFFENSE, YOUR HISTORY AND
5 CHARACTERISTICS, THE ADVISORY GUIDELINE RANGE WHICH
6 APPLIES TO THIS CASE, AS WELL AS ALL THE OTHER FACTORS
7 LISTED IN TITLE 18, UNITED STATES CODE, SECTION 3553(A),
8 IT IS PURSUANT TO THE SENTENCING REFORM ACT OF 1984 THE
9 JUDGMENT OF THIS COURT THAT ON COUNT 1 OF THE INDICTMENT
10 THE DEFENDANT, MAXWELL SUERO, IS HEREBY COMMITTED TO THE
11 CUSTODY OF THE BUREAU OF PRISONS TO BE IN PRISON FOR A
12 TERM OF 78 MONTHS.

13 I WILL RECOMMEND THAT YOU RECEIVE 500 HOURS OF
14 SUBSTANCE ABUSE TREATMENT FROM THE BOP INSTITUTION
15 RESIDENTIAL DRUG ABUSE TREATMENT PROGRAM.

16 NOW, MR. SUERO, LET ME TELL YOU SOMETHING ABOUT
17 THAT PROGRAM. IT'S A VERY GOOD INTENSIVE DRUG TREATMENT
18 PROGRAM. BASED ON WHAT'S IN THE PRESENTENCE REPORT,
19 HOWEVER, I DOUBT IF THEY'RE GOING TO FIND THAT YOU'RE
20 QUALIFIED FOR IT. WHENEVER YOU HAVE AN OPPORTUNITY TO
21 TALK TO A COUNSELOR IN THE BUREAU OF PRISONS, YOU NEED TO
22 BE ABSOLUTELY CANDID AND FRANK ABOUT YOUR PRIOR DRUG USE.
23 I SUSPECT YOUR DRUG USE IS MORE EXTENSIVE THAN YOU HAVE
24 REPORTED TO THE PROBATION OFFICER, AND YOU'RE NODDING YOUR
25 HEAD IN AGREEMENT. YOU NEED TO BE TRUTHFUL AND CANDID

1 WITH THAT COUNSELOR BECAUSE IF YOU NEED DRUG TREATMENT,
2 AND YOU HAVE REQUESTED DRUG TREATMENT, THEN YOU GOT TO
3 COME CLEAN, AND SO I WOULD URGE YOU TO DO THAT WITH THE
4 COUNSELOR AT THE BUREAU OF PRISONS. OTHERWISE, I THINK
5 THEY'RE GOING TO SAY YOU'RE NOT -- YOU DON'T HAVE THE
6 HISTORY THAT JUSTIFIES YOUR PARTICIPATION IN THE PROGRAM,
7 AND IT SEEMS TO ME THAT YOU NEED TO PARTICIPATE IN THAT
8 PROGRAM; AND IT RESULTS AS WELL IN SOME BENEFITS TO YOU.
9 CONGRESS IS TALKING ABOUT EVEN GREATER BENEFITS. I DON'T
10 KNOW WHERE THAT BILL IS EXACTLY OR WHETHER IT'S EVER GOING
11 TO PASS OR NOT, BUT CERTAINLY THEY'RE TALKING ABOUT SOME
12 OTHER THINGS.

13 AND YOU ALSO CAN RECEIVE SOME BENEFIT FROM
14 BEHAVING YOURSELF WHILE IN THE CUSTODY OF THE BUREAU OF
15 PRISONS. YOU'VE SHOWN A PROPENSITY HERE FOR RESISTING
16 AUTHORITY. IF YOU DO THE SAME THING WHILE IN THE BOP
17 CUSTODY, IF YOU RESIST THE AUTHORITY OF BOP PERSONNEL, YOU
18 WILL EVENTUALLY LOSE ALL OF YOUR GOOD TIME CREDIT. THAT'S
19 WHAT THEY DO IN THE BUREAU OF PRISONS. THEY MIGHT
20 SEGREGATE YOU, THEY MIGHT DO SOME OTHER THINGS THAT ARE
21 PUNITIVE, BUT WHAT THEY'LL CERTAINLY DO IS TAKE AWAY GOOD
22 TIME CREDIT THAT YOU COULD OTHERWISE EARN. SO I HOPE ONE
23 THING YOU HAVE LEARNED FROM THIS IS SOME RESPECT FOR
24 AUTHORITY.

25 I WILL ALSO RECOMMEND THAT YOU BE AFFORDED A

1 FULL RANGE OF EDUCATIONAL AND/OR VOCATIONAL PROGRAMS WHICH
2 ARE OFFERED BY THE BUREAU OF PRISONS.

3 I WILL FURTHER RECOMMEND TO THE BUREAU OF
4 PRISONS THAT YOU RECEIVE CREDIT FOR ALL TIME SERVED SINCE
5 YOUR ARREST AND DETENTION ON FEBRUARY 9, 2015, AND I WILL
6 RECOMMEND THAT YOU BE DESIGNATED TO A FACILITY IN THE
7 NORTHEAST.

8 WOULD YOU PREFER TO BE CLOSE TO NEW YORK OR IN
9 NEW YORK?

10 THE DEFENDANT: NEW JERSEY.

11 THE COURT: NEW JERSEY.

12 THE DEFENDANT: FORT DIX, NEW JERSEY.

13 THE COURT: FORT DIX, NEW JERSEY. ALL RIGHT,
14 I'LL RECOMMEND TO THE BUREAU OF PRISONS YOU BE DESIGNATED
15 TO FORT DIX, NEW JERSEY TO SERVE THIS SENTENCE.

16 UPON YOUR RELEASE FROM IMPRISONMENT YOU SHALL
17 BE ON SUPERVISED RELEASE FOR A TERM OF 4 YEARS.

18 WITHIN 72 HOURS OF RELEASE FROM THE CUSTODY OF
19 THE BUREAU OF PRISONS YOU SHALL REPORT TO THE PROBATION
20 OFFICE IN THE DISTRICT TO WHICH YOU ARE RELEASED.

21 WHILE ON SUPERVISED RELEASE YOU SHALL NOT
22 COMMIT ANOTHER FEDERAL, STATE OR LOCAL CRIME. YOU SHALL
23 COMPLY WITH THE STANDARD CONDITIONS THAT BE ADOPTED BY
24 THIS COURT IN LOCAL RULE 83.10, AND YOU SHALL NOT
25 ILLEGALLY POSSESS A CONTROLLED SUBSTANCE. YOU SHALL NOT

1 POSSESS A FIREARM, ANY AMMUNITION, A DESTRUCTIVE DEVICE OR
2 ANY OTHER DANGEROUS WEAPON. YOU SHALL COOPERATE IN THE
3 COLLECTION OF DNA AS DIRECTED.

4 IN ADDITION, YOU SHALL COMPLY WITH THE FOLLOW-
5 ING SPECIAL CONDITIONS: FIRST, YOU SHALL PARTICIPATE IN A
6 PROGRAM OF TESTING AND/OR TREATMENT FOR DRUG AND/OR
7 ALCOHOL ABUSE AS DIRECTED BY THE PROBATION OFFICER UNTIL
8 SUCH TIME AS YOU ARE RELEASED FROM THE PROGRAM BY THE
9 PROBATION OFFICER; AND, SECOND, YOU SHALL SUBMIT YOUR
10 PERSON, PROPERTY, HOUSE, RESIDENCE, VEHICLES, PAPERS OR
11 OFFICE TO A SEARCH CONDUCTED BY A UNITED STATES PROBATION
12 OFFICER OR DESIGNEE. FAILURE TO SUBMIT TO A SEARCH MAY BE
13 GROUNDS FOR REVOCATION OF RELEASE. YOU SHALL WARN ANY
14 OTHER OCCUPANTS THAT THE PREMISES MAY BE SUBJECT TO
15 SEARCHES PURSUANT TO THIS CONDITION. AN OFFICER MAY
16 CONDUCT A SEARCH PURSUANT TO THIS CONDITION ONLY WHEN
17 REASONABLE SUSPICION EXISTS THAT YOU HAVE VIOLATED A
18 CONDITION OF YOUR SUPERVISION AND THAT THE AREAS TO BE
19 SEARCHED CONTAIN EVIDENCE OF THE VIOLATION. ANY SEARCH
20 MUST BE CONDUCTED AT A REASONABLE TIME AND IN A REASONABLE
21 MANNER.

22 IT IS FURTHER ORDERED THAT YOU SHALL PAY TO THE
23 UNITED STATES A SPECIAL ASSESSMENT OF \$100 PURSUANT TO
24 TITLE 18, UNITED STATES CODE, SECTION 3013, WHICH SHALL BE
25 DUE IMMEDIATELY.

1 I FIND BASED UPON THIS RECORD THAT YOU DO NOT
2 HAVE THE ABILITY TO PAY A FINE, THE COURT WILL, THEREFORE,
3 WAIVE THE FINE IN THIS CASE.

4 THE COURT HAS REVIEWED YOUR PLEA AGREEMENT IN
5 THE CASE. THAT PLEA AGREEMENT IS NOW ACCEPTED BY THE
6 COURT. PURSUANT TO THE PLEA AGREEMENT AND UPON MOTION OF
7 THE UNITED STATES, THE REMAINING COUNTS OF INDICTMENT ARE
8 DISMISSED AS TO YOU.

9 TITLE 18, UNITED STATES CODE, SECTIONS 3565(B)
10 AND 3583(G) REQUIRE MANDATORY REVOCATION OF SUPERVISED
11 RELEASE FOR POSSESSION OF A CONTROLLED SUBSTANCE OR A
12 FIREARM OR FOR REFUSAL TO COMPLY WITH DRUG TESTING.

13 PURSUANT TO RULE 32 OF THE FEDERAL RULES OF
14 CRIMINAL PROCEDURE, THE COURT ADVISES YOU THAT YOU MAY
15 HAVE THE RIGHT TO APPEAL YOUR CONVICTION OR THE SENTENCE
16 IMPOSED IN THE CASE. A NOTICE OF APPEAL MUST BE FILED
17 WITHIN 14 DAYS OF THE JUDGMENT. IF YOU REQUEST AND SO
18 DESIRE, THE CLERK OF THE COURT CAN PREPARE AND FILE A
19 NOTICE OF APPEAL FOR YOU.

20 DOES EITHER PARTY HAVE ANY OBJECTION TO THE
21 SENTENCE JUST PRONOUNCED THAT'S NOT BEEN PREVIOUSLY
22 RAISED?

23 MR. BOWMAN: NO, YOUR HONOR.

24 MR. STAMBAUGH: NO, YOUR HONOR.

25 THE COURT: MR. SUERO, YOU ARE A YOUNG MAN.

1 YOU APPEAR TO ME TO HAVE A LOT OF POTENTIAL. YOU ALSO
2 APPEAR TO HAVE SOME ANGER AND SOME AUTHORITY ISSUES THAT
3 YOU NEED TO ADDRESS. YOU HAVE THESE TWO CHILDREN TO BE
4 CONCERNED ABOUT. I HOPE YOU TAKE ADVANTAGE OF EVERY
5 MINUTE OF THIS TIME. I DON'T KNOW WHAT KIND OF CHARGES
6 YOU HAVE TO FACE IN VERMONT OR WHETHER IT'S ALL RELATED TO
7 THIS HERE OR HOW THAT ALL WILL TURN OUT UP THERE, BUT I
8 HOPE YOU GET ALL THIS STUFF BEHIND YOU AND GET ON WITH
9 YOUR LIFE. YOU'VE GOT A LOT OF LIFE IN FRONT OF YOU. I
10 HOPE YOU PUT YOUR TALENTS TO GOOD USE.

11 THE DEFENDANT: THANK YOU.

12 THE COURT: GOOD LUCK TO YOU.

13 THE DEFENDANT: THANK YOU.

14 THE COURT: ALL RIGHT. YOU'LL BE REMANDED TO
15 THE CUSTODY OF THE MARSHAL TO SERVE THAT SENTENCE.

16 MR. STAMBAUGH: THANK YOU, YOUR HONOR.

17 THE COURT: ALL RIGHT. THANK YOU ALL VERY
18 MUCH.

19 LET'S ADJOURN FOR THE DAY.

20 (PROCEEDINGS ARE CONCLUDED AT 3:42 P.M.)

21 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
22 THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

23

24

25 KAREN J. BRADLEY/S
SIGNATURE OF COURT REPORTER

3/24/16
DATE